

**UNITED STATES OF AMERICA  
NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR  
OFFICE OF CIVIL RIGHTS**

**UNITED STATES OF AMERICA  
ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF CIVIL RIGHTS**

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
DEPARTMENTAL OFFICE OF CIVIL RIGHTS**

**FEDERAL HIGHWAY ADMINISTRATION  
OFFICE OF CIVIL RIGHTS**

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**THE DESCENDANTS OF THE BOYD CARTER MEMORIAL CEMETERY, and  
RURAL AGRICULTURAL DEFENDERS**  
**Complainants,**

**vs.**

**Docket No.**

**WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE; WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION; WEST VIRGINIA  
DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS; DEPARTMENT  
OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, WEST  
VIRGINIA DIVISION; JEFFERSON COUNTY COMMISSION and ITS  
COMPONENTS: JEFFERSON COUNTY HISTORIC LANDMARKS COMMISSION,  
JEFFERSON COUNTY OFFICE OF ENGINEERING, and THE OFFICE OF THE  
COUNTY CLERK OF JEFFERSON COUNTY**  
**Respondents.**

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**COMPLAINT PURSUANT TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

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## **I. COMPLAINANTS**

The Complainants are the African American Boyd Carter Memorial Cemetery (hereinafter called “the Cemetery”), and its descendants; and Rural Agricultural Defenders (RAD). (b) (6) Privacy, (b) (7)(C) Enforcement Privacy are African American descendants of many individuals buried in the Cemetery. Jennifer J. King, Giuliana Brogna, and Susan April are members of Rural Agricultural Defenders, friends of the Cemetery.

The Complainants bring forward this complaint pursuant to Title VI of the Civil Rights Act of 1964 on behalf of the 85 dearly departed occupants of the Cemetery ([Exhibit A](#)) and at least 88 additional deceased individuals whose internment site is located in Kearneysville, WV, but the exact locations are unknown. The majority of these deceased individuals were African American. Not all death records are available (only records prior to 1968 are public) but the remaining individuals are most likely African American due to the familial relationships to other decedents buried in the Cemetery.

This vulnerable, voiceless minority population was adversely affected by the neutral, but more often indifferent, application of policies and procedures by West Virginia State Agencies and Departments beginning in early 2017 and continuing to the present day. The Complainants assert that the African American occupants of the Cemetery have been regularly discriminated against as a consequence of supposedly routine governmental business. The Complainants assert that no substantial legitimate justification for these disparate impacts can be made; time and time again the interests of the well-funded and well-connected few were prioritized above the dignity of the human beings interned in the Cemetery. Furthermore, the Complainants believe that effective alternative practices exist that can lessen the potential for unintended discrimination and this complaint will give the Respondents the opportunity to address diffeincies their policies and procedures that can lead to discrimination, even unintentially, in violation of Title VI of the Civil Rights Act of 1964.

The dead cannot speak for themselves, the living must speak for them.

## **II. RESPONDENTS**

The Respondents are West Virginia State Historic Preservation Office (WVSHPO); West Virginia Department of Environmental Protection (WVDEP); West Virginia Department of Transportation (WVDOT), Division of Highways ; Department of Transportation, Federal Highways Administration, West Virginia Division; Jefferson County Commission (JCC) and its components: Jefferson County Historic Landmark Commission (JCHLC); Jefferson County Office of Engineering, and The Office of the County Clerk of Jefferson County.

The Respondents' actions and inactions in regards to the Cemetery, both directly and indirectly, in the course of government business have severely and adversely impacted the Cemetery. The Complainants do not see intentional discrimination at work, but rather a negative, disparate impact that may be unintended, but nethertheless has discriminating affects on the Cemetery occupants and their descendents.

Regardless if the Respondents explicitly prohibit discrimination in violation of Title VI, the established procedures and policies, and implementation of those policies have allowed various construction activities to proceed unchecked, causing irreparable harm to the Cemetery, its descendants, and African American culture, heritage, and history in Jefferson County WV. This harm is obvious in that the archaeological settings and significance of these burial grounds have been directly affected. The Respondents, who all receive federal funding as demonstrated in the sections below, are required to make every effort to abide by all laws of the Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and must have the awareness, skills, and training to respect and protect all aspects of a culture's heritage, history, and traditions.

It is unclear to the Complainants whether the harms described herein are the results of collusion on a county, state and national scale or a complete breakdown of Jefferson County and West Virginia State government functioning. The reason why matters little; the Cemetery and it's occupants were left to the mercy of corporations that do not feel obligated to respect the Cemetery and clearly intend to continue construction regardless of the consequences to others.

### **III. SUMMARY OF TITLE VI COMPLAINTS BY AGENCY**

Under Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Complainants submit this affirmative statement within 180 days of the following harms:

- The Section 106 procedure managed by West Virginia State Historic Preservation Office (WVSHPO) was not compliant with Federal Regulations 36 CFR § 800 and 54 U.S. Code § 306101-306131, resulting in an incomplete Section 106 process , and flawed permits that referenced it. Further, West Virginia State Historic Preservation Office (WVSHPO) failed to respond and act upon communications and pleas sent from descendants, historians, and supporters regarding the historic significance of the Cemetery and the need to preserve and protect the Cemetery against construction activities on its borders. The last action by WVSHPO in regards to the cemetery was May 3, 2019.
- Approval of the NPDES/State Stormwater Construction Permit (Permit #WVR311281) for Mountaineer Gas' gas pipeline issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP).
- Failure of the Jefferson County Historic Landmarks Commission (JCHLC) to comply with WVSHPO procedures and procedures set forth under JCHLC's bylaws which govern recognition and protection of historic areas. Last JCHLC action regarding the Cemetery was June 18, 2019.
- Failure for Jefferson County Office of Engineering to review Mountaineer Gas' gas pipeline route and project. (NPDES/State Stormwater Construction Permit (Permit #WVR311281) issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP))
- Failure for Jefferson County Clerk to accurately keep land records. Incorrect land records were involved in Mountaineer Gas' gas pipeline route and project. (NPDES/State Stormwater Construction Permit (Permit #WVR311281) issued on March 29, 2019 by the West Virginia Department of Environmental Protection (WVDEP))



## IV. THE CEMETERY BACKGROUND

### A. About Boyd Carter Memorial Cemetery

The Cemetery is located on Granny Smith Lane in Kearneysville, WV and lies within the Middleway District of Jefferson County. It is a predominantly African American burial ground. The community where the Cemetery is located has been historically called Harts Town. Harts Town was a known African American community and has been well documented in WV State Historic Preservation Office's (WVSHPO) historical surveys, however, it has not been granted a designation of historical significance, protection, or preservation to any to the African American structures, objects and sites in the area.

The Cemetery has been referred to as the Boyd Carter Cemetery, Stewart Chapel Methodist Cemetery, African Methodist Episcopal (A.M.E.) Cemetery, Methodist Cemetery of Kearneysville, and Jefferson Orchards Cemetery. Sometimes the Cemetery is referred to as two separate cemeteries, however, it is one tract of land.

The Cemetery has at least 85 known burials. [\(Exhibit A\)](#) The first known burial in the Cemetery was in 1904 and the most recent burial was in 1999. A December 1902 deed (Deed Book 98, Page 68) called the Cemetery a "burying ground for colored people". [\(Exhibit B\)](#) There are some graves with only markers and no discernible text. There are several United States military war veterans buried there.<sup>1</sup> The Cemetery is a public cemetery and as mentioned within its deed has its own ingress and egress rights to Granny Smith Lane.

A neighboring property deed indicates there could be burials along property boundaries: "this conveyance is made subject to such rights of burial as may exist - it being understood that there may be certain bodies buried in the portion of the land herein described near to and along the northeast line of the old cemetery and the northwest line of the old cemetery." [\(Exhibit C\)](#). A

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<sup>1</sup> (b) (6) Privacy, (b) (7)(C) Enforcement Privacy



recent survey performed indeed show many burials outside of the Cemetery boundaries. ([Exhibit D](#)) Only one grave, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy is listed for spatial reference on the recent survey map; however, many more identifiable burials lie beyond the Cemetery property boundaries.

## 1. Ground Penetrating Radar

Ground penetrating radar was performed on April 3, 2019, which indicates several potential unmarked graves inches from Granny Smith Lane.<sup>2</sup> ([Exhibit E and F](#)) Some graves have a depth of only 2.5 feet below ground surface.<sup>3</sup>

With the help of ground penetrating radar and research, grave plotting is underway ([Exhibit G](#)).<sup>4</sup> More archaeological research is needed to detect burials. As indicated in the report many graves could be depreciated, not within caskets, and vegetation impairments make burials harder to detect with radar:

“We found that the soil allowed for maximum GPR depth penetration of 5’ in areas outside of heavy vegetation. Findings ranged from confirmed potential graves to potential voids. As stated in the limitations, due to the age of many of the graves and the unknown caskets that the deceased were buried in, many of these graves could be extremely depreciated over time. Therefore, minimal voids could indicate the presence of remnants and were marked out accordingly.”<sup>5</sup>

## 2. Unmarked Graves

From death certificate and grave research, there are at least 85 confirmed burials in the Boyd Carter Memorial Cemetery. ([Exhibit A](#)) Death certificate research indicates an additional

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<sup>2</sup> Ground Penetrating Radar Report

[https://drive.google.com/file/d/1rTS0CM20re0pp0Rgt7UD6BIjkcTCud\\_e/view?usp=sharing](https://drive.google.com/file/d/1rTS0CM20re0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing)

<sup>3</sup> Ground Penetrating Radar Report - page 4

[https://drive.google.com/file/d/1rTS0CM20re0pp0Rgt7UD6BIjkcTCud\\_e/view?usp=sharing](https://drive.google.com/file/d/1rTS0CM20re0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing)

<sup>4</sup>

[https://www.google.com/maps/d/u/0/viewer?fbclid=IwAR1WJENG6cJT6a4B-dwJUtgStgd8EEfGRl-ywbaopukS8FrHE1na7w\\_z6tk&mid=1qnKO6az5pwhfeLjn3w6nIzzEEcQUZYU&ll=39.37681500000004%2C-77.881969000000003&z=19](https://www.google.com/maps/d/u/0/viewer?fbclid=IwAR1WJENG6cJT6a4B-dwJUtgStgd8EEfGRl-ywbaopukS8FrHE1na7w_z6tk&mid=1qnKO6az5pwhfeLjn3w6nIzzEEcQUZYU&ll=39.37681500000004%2C-77.881969000000003&z=19)

<sup>5</sup> Ground Penetrating Radar Report - page 2

[https://drive.google.com/file/d/1rTS0CM20re0pp0Rgt7UD6BIjkcTCud\\_e/view?usp=sharing](https://drive.google.com/file/d/1rTS0CM20re0pp0Rgt7UD6BIjkcTCud_e/view?usp=sharing)

88 burials with Kearneysville, WV listed as the place for interment. These individuals do not appear in the cemetery inventories of the four cemeteries located in Kearneysville (Caucasian cemetery at the Kearneysville Presbyterian Church, African American cemetery located at St. Paul's Baptist Church, Hart-Lucas African American cemetery located adjacent of St. Paul's Baptist Church's cemetery, and African American Boyd Carter Memorial Cemetery). A cross-reference check was also performed against other known African American and non-segregated cemeteries located in Jefferson and Berkeley Counties.

### **3. Boyd Carter Memorial Cemetery - Slave Burial Ground**

Historical research shows the Cemetery and surrounding properties were owned by slave owners, [REDACTED] & his descendants, the Dandridge's. Jefferson Orchards' (adjacent to the Cemetery property) deed indicates Dandridge ownership. ([Exhibit H](#)) From 1763 - 1772, Stephen owned 1,100 acres and 318 acres was used for mostly wheat production and pasturage. In the center of this 318 acres, is where the Cemetery sits today. Historical research indicates the Cemetery and surrounding properties were a burying ground for a hundred years of Stephen's & Dandridge's enslaved. According to U.S. Censuses, through most of the first half of the 1800's, the Dandridge's owned the most enslaved persons ranging from forty to over eighty.

The 1852 S. Howell Brown Map of Jefferson County, WV shows Dandridge land ownership.<sup>6</sup> ([Exhibit I](#)) While mapping technologies have greatly improved since 1852, many property boundaries have remained the same. The [REDACTED] property of today (formerly owned by [REDACTED]) has remained unchanged for over 150 years. We used this property as a point of reference to overlay the current Jefferson County Tax Map with the 1852 map showing Dandridge ownership and the Cemetery location. ([Exhibit J](#)) Also, the West Virginia GeoHistory / Geo-Explorer Project: Jefferson County Land Grants map<sup>7</sup> show Stephen ownership of the Cemetery and surrounding property in 1763. ([Exhibit K](#))

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<sup>6</sup> 1852 S. Howell Brown Map of Jefferson County, WV <https://www.loc.gov/item/2005625308/>

<sup>7</sup> West Virginia GeoHistory / Geo-Explorer Project Jefferson County Land Grants <http://wvgeohistory.org/portals/0/ESRIJavascriptMaps/GHLandGrants/viewer/index.html>

More research is needed, however, it is possible that since some of the confirmed and unmarked burials have birth dates before 1863, these individuals could have been born into slavery.

Mother Nature and Father Time have taken a toll on the Cemetery. This is not anyone's fault and it is not abandoned as many living descendants still care for the Cemetery. Tree roots have become intertwined with graves. Most of the trees in the Cemetery have been there for years and research shows that slaves often buried their departed in remote areas and non-arable land among trees and underbrush and used trees as burial markers.<sup>8,9</sup> ([EXHIBIT L and M](#)) . Slaves were forced to bury their loved ones where their masters deemed not worthy for other purposes. The Cemetery has a deep depression and a rock ridge located in the middle of the property which would make this land unworthy of agriculture.

Plantings of yucca, daffodils, and small bushes mark graves.<sup>10,11</sup> ([EXHIBIT M, N, and O](#)) As is traditional of African American burials, individuals were laid to rest in an east-west orientation. Some of the burials are not only near family members but also arranged in kinship groups. Additionally, there are tokens and symbolic memorials left on gravesites. It is difficult at this time to determine how many of these remnants, memorials, and grave markers are underneath the soil and debris at the cemetery. A phase one cultural resource study could help in identifying resources and defining the site boundaries within the area of potential effect.

Often African American cemeteries' and burial grounds' traditions are misunderstood or disregarded and are labeled as abandoned. The University of Georgia states, "Consequently, these traditions, along with the South's segregated past, has lead [sic] to the negative perception

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<sup>8</sup> "Grave Matters: The Preservation of African-American Cemeteries" by the Chicora Foundation, page 4 <http://www.chicora.org/pdfs/Grave%20Matters%20-%20The%20Preservation%20of%20African%20American%20Cemeteries.pdf?fbclid=IwAR2RIXr7kH3S-fWPvic6vGEfnZsA1I6VMPU5PcxZiltkU3lRe6ja5f5a64c>

<sup>9</sup> "African American Cemeteries and the Restoration Movement" University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

<sup>10</sup> "Grave Matters: The Preservation of African-American Cemeteries" by the Chicora Foundation, page 5 <http://www.chicora.org/pdfs/Grave%20Matters%20-%20The%20Preservation%20of%20African%20American%20Cemeteries.pdf?fbclid=IwAR2RIXr7kH3S-fWPvic6vGEfnZsA1I6VMPU5PcxZiltkU3lRe6ja5f5a64c>

<sup>11</sup> "African American Cemeteries and the Restoration Movement" University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

of Black cemeteries as being abandoned and unkept.”<sup>12</sup> Please note the Anderson Cemetery mentioned in this reference document is not in West Virginia. The Anderson Cemetery is located in Henrico County, Glen Allen, Virginia.<sup>13</sup>

Many old cemeteries are in danger of being destroyed by encroaching economic development projects; however, it is more common that African American cemeteries are removed and erased from history and their communities.<sup>14</sup> The removal of African American cemeteries and burial grounds has become such a problem that new legislation has been introduced to protect these cemeteries and burial grounds.<sup>15</sup>

The African American Burial Grounds Network Act, also known as HR 1179, was created by Rep. Alma S. Adams (D-NC) and Rep. A. Donald McEachin (D-VA) to preserve and protect African American cemeteries and burial grounds and African American history.<sup>16, 17</sup>

Ignorance of a culture’s heritage and traditions is not an excuse for discriminatory actions (or inactions) by government entities. It is the duty of the Respondents to at least respect the variety of cultures and traditions that make the United States a uniquely diverse country. Every effort should be made by all the Respondents to prevent discrimination on the basis of gender, race, color, disability or national origin. The Respondents, being federally funded agencies,

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<sup>12</sup> “African American Cemeteries and the Restoration Movement” University of Georgia <https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3eukiEHFI0w6q2F7488J0UbAhvXKTA328V...>

<sup>13</sup> “Marker unveiled at historic Glen Allen cemetery”, by the Henrico Citizen, May 14, 2019 <https://www.henricocitizen.com/articles/marker-unveiled-at-historic-glen-allen-cemetery/>

<sup>14</sup> “Gentrification is erasing black cemeteries and, with it, black history” by Christopher Petrella, The Guardian, April 29, 2019, [https://www.theguardian.com/commentisfree/2019/apr/27/gentrification-is-erasing-black-cemeteries-and-with-it-black-history?CMP=share\\_btn\\_fb&fbclid=IwAR3MpQ3gVHK0h1BuGPhZ81qkcFD3nyu6OtzYqEcqjYCS2PDIGCOq618V-tk](https://www.theguardian.com/commentisfree/2019/apr/27/gentrification-is-erasing-black-cemeteries-and-with-it-black-history?CMP=share_btn_fb&fbclid=IwAR3MpQ3gVHK0h1BuGPhZ81qkcFD3nyu6OtzYqEcqjYCS2PDIGCOq618V-tk)

<sup>15</sup> “New Legislation Seeks To Protect Lost African-American Burial Grounds”, by David Anderson, Forbes, Feb 13, 2019, <https://www.forbes.com/sites/davidanderson/2019/02/13/new-legislation-seeks-to-protect-lost-african-american-burial-grounds/?fbclid=IwAR1ZFLlfhyBgFE57zELkKh8iGqTwxFFs7R8BwlMGaQvBs1lRpAWeEqhKAfw#362306685dd8>

<sup>16</sup> “Lawmakers Introduce African-American Burial Grounds Network Act”, By George Kevin Jordan, The Afro, March 9, 2019, <https://www.afro.com/lawmakers-introduce-african-american-burial-grounds-network-act/?fbclid=IwAR3kAbSfnJZRjFyJQVeF4YjqMlme7PORb8AEfy20...>

<sup>17</sup> The African American Burial Grounds Network Act, HR 1179, [https://mceachin.house.gov/sites/mceachin.house.gov/files/documents/2019-02-11%20Adams\\_McEachin%20African%20American%20Burial%20Ground%20Network%20Act\\_0.pdf](https://mceachin.house.gov/sites/mceachin.house.gov/files/documents/2019-02-11%20Adams_McEachin%20African%20American%20Burial%20Ground%20Network%20Act_0.pdf)

should have the awareness, knowledge, and training to not only recognize African American historical sites but handle them respectfully and appropriately.

#### **4. African Methodist Episcopal Church of Kearneysville Affiliation**

The African Methodist Episcopal (A.M.E.) Church has been abandoned since the 1970s but was affiliated with the Cemetery for decades. The deed for the A.M.E. Church shows it was established in 1889. [\(Exhibit P\)](#) The A.M.E. Church has also been called the Stewart Chapel African Methodist Episcopal (A.M.E.) Church. It is located less than 800 feet from the Cemetery. [\(Exhibit Q\)](#)

WVSHPO previously reviewed the A.M.E. Church for the National Historic Register eligibility back in 1996 [\(Exhibit R\)](#) as well as the related A.M.E. Meeting House. [\(Exhibit S\)](#) Both of these structures were decommissioned from Hartstown community use in the 1970's. While the WVSHPO surveys described dilapidated structures, they made no reference to the Church grounds as well as making no recommendations for further archaeological surveys or research. A church, being sacred ground, usually has burials on its property. It was remiss of the surveyor and WVSHPO not to recommend further archaeological research and assessment.

As mentioned previously, 88 death certificates indicate Kearneyville as the interment location. The Complainants believe many of these individuals to be interred at the A.M.E. Church as well as the Boyd Carter Memorial Cemetery. Oral interviews were conducted with (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Cemetery descendants and life-long residents of Kearneysville, and they have recollections of graves and burial ceremonies at the A.M.E. Church decades ago.

It is possible temporary funeral home markers were used at the time of interment instead of more permanent markers or headstones and time, weather, etc. has displaced those markers. Lack of burial plot documentation for the Cemetery and lack of archaeological research on the Cemetery, A.M.E. Church, and Meeting House make burial locations difficult to determine. Many of the African American death certificates in question indicate burials in “M.E. Church of Kearneysville” which could indicate burials at the Cemetery or the A.M.E. Church. By cross checking with other Jefferson County and Berkeley County cemeteries, the Complainants believe

many of these individuals were were laid to rest at the Boyd Carter Memorial Cemetery and the A.M.E. Church.

It is highly likely there are more than 88 unmarked African American graves located in Boyd Carter Memorial Cemetery and A.M.E. Church as the latest burial in Boyd Carter was 1999. For privacy concerns regarding social security numbers, death certificate research can only be performed for deaths up until 1968.

The A.M.E. Church, Meeting House, and its property are currently without guardianship or trustees as the original trustees have been deceased for years and legal provisions have not been established for the property. Some of the original trustees for the A.M.E. Church were also the original trustees for the Cemetery. Further research is needed to identify possible future heirs and/or trustees. To the Complainants knowledge, no legal proceedings have occurred to condemn the property and it has not been taken by eminent domain. To this day, Jefferson County Assessor and Tax information indicates the property is still under a church exemption status.

[\(Exhibit T and U\)](#)

## **V. RECIPIENT: WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE**

The West Virginia State Historic Preservation Office (WVSHPO) is a division of the West Virginia Department of Arts, Culture and History. WVSHPO states its mission is “to encourage, inform, support, and participate in the efforts of the people of West Virginia to identify, recognize, preserve and protect West Virginia's prehistoric and historic structures, objects and sites.” WVSHPO seems to fill two roles in the Section 106 process; as the SHPO consultant in a subordinate role to the “Agency Official” (as described in 36 CFR § 800.2(a)) leading the Section 106 process on behalf of a federal agency; SHPO also appears to act as the “Agency Official” leading the Section 106 process when a federal agency is not directly involved and historic preservation consultation is required for state level permits. Ms. Susan Pierce is the State Historic Preservation Officer and Director of WVSHPO.

### A. Federal Funding

WV SHPO is the recipient of federal grants from the National Parks Service, a Bureau of the United States Department of the Interior. The CFDA program is 15.904 - Historic Preservation Fund Grants-In-Aid, which provides FORMULA grants and PROJECT grants.<sup>18</sup> The Complainants allege that from March 7, 2017 through the present, WVSHPO's practices had a disparate impact on the Boyd Carter Cemetery and its descendants.

#### West Virginia Department of Arts, Culture and History / WVSHPO Federal Funding 2017 - 2019

Fed. Agency	Action Date	Award ID	Amount
DOI/NPS	07/14/2017	<a href="#">P17AF00018</a>	\$443,207
DOI/NPS	09/05/2017	<a href="#">P17AF00018</a>	\$276,583
DOI/NPS	04/10/2018	<a href="#">P18AF00021</a>	\$357,143
DOI/NPS	06/07/2018	<a href="#">P18AF00021</a>	\$375,816
DOI/NPS	07/02/2019	<a href="#">P19AF00115</a>	\$742,836
DOI/NPS	08/21/2019	<a href="#">P19AP00147</a>	\$24,841

### B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act.

The Complainants argue that May 3, 2019 is the most recent interaction of consequence with WVSHPO regarding the Cemetery. James Surkamp, a Jefferson County resident and local

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<sup>18</sup>FORMULA grants- Funding to States, Tribes, Territories, the Freely Associated States, the District of Columbia, Certified Local Governments, and other applicants as defined by Congress, to assist in the identification, evaluation, and protection of historic properties by such means as education, survey, planning, technical assistance, preservation, documentation, and financial incentives like grants and tax credits available for historic properties.

PROJECT grants- Funding to eligible grantees to provide for the identification, evaluation, and protection of historic properties as defined by Congress.



historian, sent WVSHPO an historical review of the area now known as Jefferson Orchards where the Rockwool Ranson facility is currently under construction. WVSHPO received his report on May 3, 2019. ([Exhibit V](#)) This report, which cited census reports, Jefferson County land maps, tax records and other publicly available documentation, laid out a robust argument for the historical significance of the site that includes the Cemetery. WVSHPO never responded to this communication, essentially refusing to initiate the “Post-Review Discovery” process as described in 36 CFR § 800.13. This negligent action is described below.

The 180 day limitations period ends October 30, 2019. This complaint was sent by FedEx Overnight Priority to Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW, Washington, DC, 20240 on September 23, 2019.

### **C. Background**

WVSHPO has known of the existence of the Cemetery for many years. Unfortunately, due to inaccuracies included on the 2005 WV Cemetery Survey Form for the Cemetery, much of the information in WVSHPO’s possession about the Cemetery is incorrect. For example, under “Burial Population”, graves were noted to be “Euro & African American”. ([Exhibit W](#)). Even more egregious, the survey notes only 53 known burials; there are 32 additional burials visible on the ground and in the historic record. The 2005 survey also incorrectly claims that “Some caskets appear to have been removed.”; however, this is an unsubstantiated statement as there is no evidence or known reason for burial removals at the time or prior to this survey.

The Complainants argue that WVSHPO was filling the role of “Agency Official” in the Section 106 process as no federal agency was involved. There were many points throughout the 15 months process that WVSHPO could have acted as a protective advocate not only for the Cemetery, but for at least three near-by properties listed on the National Register of Historic Places ((b) (6) Privacy, (b) (7)(C) Enforcement Farm, (b) (6) Privacy, (b) (7)(C) Enforcement Farm, and (b) (6) Privacy, (b) (7)(C) Enforcement). WVSHPO failed in its responsibility to properly manage the Section 106 process as an advocate for historic places, causing the Cemetery, among other properties, to suffer a disparate impact from the construction activities at the Rockwool site.

The majority of research used in this complaint was obtained by a Freedom of Information Action request to WVSHPO filed August 28, 2018 by Jefferson County Vision. Extracts of this large FOIA returned are included as exhibits. Mr. James Surkamp provided historic research resources.

#### **D. Discriminatory Acts**

**a. WVSHPO incorrectly assumes the Cemetery is not in the direct footprint of Rockwool construction activities. This action violates 36 CFR § 800.4(a)(1) which specifies that the Area of Potential Effect must be determined and 36 CFR § 800.4(b)(1) which requires the agency official to “make a reasonable and good faith effort to carry out appropriate identification efforts”.**

The Complainants argue that WVSHPO neglected to follow federal regulations governing the Section 106 process initiated by ERM, Inc. on behalf of the Jefferson Orchard Project (Project FR# 17-437-JF, AKA “Project Shuttle”, “Granny Smith Lane, Kearneysville”, “Rockwool”, “Roxul”) on March 7, 2017 ([Exhibit X](#)). In a reply letter ([Exhibit Y](#)) sent April 3, 2017, Susan Pierce, Deputy State Historic Preservation Officer, noted the Cemetery’s presence immediately adjacent to the project site (Cemetery WV SHPO ID #46JF507). She notes that the Cemetery had not yet been evaluated for inclusion on the National Register of Historic Places (NRHP), but critically and incorrectly assumes that the Cemetery is not in the direct footprint of the project area, and will therefore only need to be evaluated for viewshed effects (“Indirect effects” per Section 106) if deemed eligible for the NRHP. Ms. Pierce erred earlier in this same letter by suggesting, without evidence or consultation with ERM, Inc. that a viewshed evaluation anticipating a 2-3 story building would be adequate.

Ms. Pierce was not aware of and made no attempt to be aware of a number of marked and unmarked graves that lay outside the Cemetery property line. Surveys and assessments over the next year and a half also failed to note that these graves are situated on Rockwool’s property and therefore directly in the footprint of the project area ([Exhibit D and E](#)). This wrong assumption remained a “fact” for WVSHPO even after they had signed off on the project (Approval letter is

estimated to have been delivered around June 25-July 4, 2018, Complainants do not have an email or letter evidence).

In an email dated August 21, 2018, ([Exhibit Z](#)), Carolyn Kender, an archaeologist employed by WVSHPO, claimed “It is our understanding that the Jefferson Orchard Cemetery [the Cemetery] will not be impacted by the project’s construction activities”. WVSHPO relied on assessments done by consultants to deem the Cemetery ineligible for inclusion on NRHP, and as it never acknowledged that some graves were outside of the property line, how could WVSHPO have possibly determined that the Cemetery would be unaffected by construction?

It is the Complainants understanding that WVSHPO guidelines do not consider cemeteries as eligible for NRHP unless someone of historical significance is buried there. How could WVSHPO and their consultants have made this assumption with an incomplete 2005 burial inventory which never was given a second look or assessment? Again, there are 32 more easily identifiable confirmed burials than the 53 that was listed on the 2005 burial inventory.

Rockwool<sup>19</sup> stormwater construction plans approved by the WVDEP reveal their intention to construct an emergency access road next to the Cemetery; on the road currently named Granny Smith Lane. ([Exhibit AA](#)) An easement agreement made between Rockwool and Jefferson Orchards, Inc. filed in the Jefferson County Courthouse (deed book 1197 page 680) also reveal their intentions for said emergency access road. ([Exhibit BB](#))

Granny Smith Lane currently is a gravel, single-vehicle width road. The emergency access lane is required to be at least 12 feet wide, which implies that Granny Smith Lane will need to be widened, threatening the graves laying outside the Cemetery boundaries on Rockwool property. There are marked graves as well as unmarked graves detected by ground penetrating radar within this area. ([Exhibit E and F](#)) Some of these graves lay 6 inches from the road and are critically threatened.

It is unclear how the Cemetery would have been treated differently if WVSHPO correctly noted that graves lie outside the Cemetery boundaries on Rockwool property. It is also unclear how this portion of land containing these graves could have been sold to Rockwool. The Complainants argue that due to WVSHPO’s negligent assumption that the Cemetery was not

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<sup>19</sup> Roxul dba Rockwool is tracked through the entire WVDEP permitting system as the entity Roxul.

included in the direct footprint of construction activity, and the fact that WVSHPO, various consultants and Rockwool, made no attempt to correct this wrong assumption; the occupants of the Cemetery and the Descendants have been disparately impacted by the disturbance to the Cemetery's archaeological significance from the construction activities of Rockwool and the Mountaineer Gas Pipeline and threat of exhumation to make way for the emergency access lane.

**b. WVSHPO incorrectly requested Section 106 public comment from Jefferson County Historic Landmarks Commission (JCHLC). The Rockwool project is located in Ranson, WV therefore the request for public comment should have been addressed to City Council of Ranson, WV. This violated 36 CFR § 800.3(e) requiring a plan to inform the public of the undertaking.**

There appears to be confusion over what government entity has authority to make public comments for this project. The entirety of the Rockwool project is located in the jurisdiction of Ranson, not the Middleway District of Jefferson County as was put forth by ERM, Inc. when the Section 106 process was initiated and continued to be incorrectly located in Middleway in subsequent communications and reports. The request for Section 106 public comments should have been sent to Ranson City Council in addition to the JCHLC, which had jurisdiction over three nearby NRHP properties and the Cemetery.

In the JCHLC October 10, 2018 meeting minutes ([Exhibit CC](#)), “[REDACTED] suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes.” “Mr. Burke responded to [REDACTED] and indicated the property [Rockwool] is within a municipal boundary [Ranson, WV] and, thus, not under the jurisdiction of the HLC.” The suggestion is made that “Once Rockwool chose Ranson instead of the county property, the county commission took no further part [in the process].”

It is fair to assume that Ranson is responsible for monitoring historic places within its jurisdiction. Under the Section 106 regulations, 36 CFR § 800.2(c)(3) - Participants in the Section 106 process: “Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.” However, Ranson does not

have a committee or council dedicated to historic landmarks in its jurisdiction. In this case, the Section 106 request for public comment for the Rockwool project should have been addressed to the City Council of Ranson. Rockwool had been working intimately with the City of Ranson and knew well that their property was located in Ranson, why was this error not addressed by Rockwool or its contractors?

Since JCHLC denies responsibility for evaluating this particular property and provided no comment, and the municipality in which the property is located does not have an established entity to provide comments on historic places, and no effort was made by WVSHPO or ERM, Inc. to contact Ranson, **then it is logical to conclude that the Section 106 requirement for public comment was not met.**

Regardless of the jurisdiction confusion regarding the Rockwool property, which is indeed located in Ranson, WV, the Cemetery is located in the Middleway District of Jefferson County, and falls within the purview of the JCHLC. The JCHLC therefore neglected their responsibility to evaluate the Cemetery when they incorrectly assumed that none of the aspects of this project were within their authority to evaluate.

The fact that the public was not informed, not even through a governmental body charged with handling historic properties within their jurisdiction, certainly violates 36 CFR § 800.3(e) requiring a plan to inform the public of the Section 106 undertaking. Although SHPO did make a plan, the plan was faulty from inception and destined to never be seen by the public.

**c . WVSHPO did not receive public comment for the Section 106 process in violation of 36 CFR § 800.2(d)(2)(2). Further, it is unclear if Jefferson County Historic Landmark Commission (JCHLC) received the letter requesting public comment.**

Regardless that the City of Ranson should have been contacted to provide public comment for the area within their jurisdiction, there was no reply or public comment from the agency that was solicited for comment, JCHLC. This violates 36 CFR § 800.2(d)(2)(2) which requires that the public be informed about an undertaking and its effects on historic properties. “The agency official must, except where appropriate to protect confidentiality concerns of

affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.”

In WVSHPO’s April 3, 2017 reply letter ([Exhibit Y](#)) to ERM, Inc. which initiates the Section 106 Process, special mention is made that Federal regulations require public comment. WVSHPO also requires that ERM, Inc. specifically contact the Jefferson County Historic Landmark Commission (JCHLC) and request comment on the project. In this letter, the Cemetery (WVSHPO ID# 46JF507) is specifically mentioned as a potential historic place that requires evaluation for inclusion on NRHP.

A July 24, 2017 reply letter ([Exhibit DD](#)) to WVSHPO from Paige Gardner of The Thrasher Group, Inc. (A sub-consultant hired to perform the Phase 1 Archaeological Survey), supplies a copy of the letter sent on June 5, 2017 ([Exhibit EE](#)) to JCHLC requesting public comment. There are three NRHP properties that are listed on this letter, but the Cemetery is NOT listed nor is its ID number given. It is impossible to know if the Cemetery was purposely excluded from this letter, however, its exclusion certainly would have made evaluation of the Cemetery by the JCHLC unlikely.

Ms. Gardner reports that she received no comments or communications in response from JCHLC within 30 days. It appears that no other attempts were made to contact the JCHLC regarding this project. In the digital era we live in, it must be asked why contact via e-mail or telephone was not attempted. Both an email address ([landmarkscommission@jeffersoncountywv.org](mailto:landmarkscommission@jeffersoncountywv.org)) and a telephone number (304-728-3195) are listed on the JCHLC website. Why didn’t Ms. Gardner try to make contact through another method?

Regardless of the reason, the result was that no public comments were received from JCHLC. It appears that WVSHPO accepts this singular contact attempt as satisfying the requirement for public comment as they made no response to the July 24th letter. It appears that no other attempts were made to alert the public at large to the Section 106 review underway. Had any attempt been made to alert the public through usual means, i.e. Legal Notice in the local paper of record (The Spirit of Jefferson), it is likely that members of the community and descendants would have responded.

Furthermore, there is no proof provided that the June 5th letter was in fact received by JCHLC. There is no delivery confirmation receipt or evidence of a postmarked envelope included with the July 24th letter. A review of JCHLC's meeting minutes from the past several years reveals that projects under Section 106 review are discussed and evaluated during the JCHLC's bimonthly meetings. There is no mention in the July 12, 2017 meeting minutes of the June 5th letter or the Section 106 process for Project FR# 17-437-JF, AKA "Project Shuttle" ([Exhibit FF](#)). The first time the Rockwool/Roxul project is discussed by JCHLC occurs on December, 18 2017 in which JCHLC member Ben Horter reports that "They are already moving dirt. Their 106 was approved". ([Exhibit GG](#)) To be clear, the Section 106 process was not closed until 7 months later in late June 2018.

The Cemetery was disparately impacted by the lack of public comment in that the local community, and even those historically-minded individuals on the JCHLC, were unaware of the imminent threat of development until construction had already begun. Had the public been alerted in advance, descendants and concerned citizens would have had the opportunity to voice opposition to the project and possibly been able to uncover the historic importance of the land parcel and Cemetery in particular.

**d. Consultants failed to uncover the potentially important historical relevance of the Cemetery as it relates to the land parcel owned by Rockwool. This effectively denied the Cemetery the possibility of inclusion on the National Historic Properties Register.**

History is not hidden in Jefferson County. In fact, the prominence of Revolutionary and Civil War history in the county make it a tourism destination for thousands of visitors every year. As described in the Background section of this report, the Cemetery and the surrounding land tell an important story of the rich history of Jefferson County. Starting in Revolutionary times, through the pre-civil war slave-holding period, the Civil War itself, and into the 20th century, the land on which Rockwool is building, and the Cemetery that is adjacent to this property, have significant historical value.

While general reference to local Jefferson County history is made in the History/Architecture Survey dated June 14, 2017, written by Jacquelyn Lehmann of Weller and Associated and the Phase 1 Archaeology Literature Review and Reconnaissance Survey dated June 29, 2017, written by Ryan Weller of Weller and Associates, the consultants does not appear to have completed an in-depth investigation of the land plot in question. A very shallow view of history is made according to the Scope of Work encompasses only the recent past of the property including its time as an orchard.

The archaeological surveys were inadequate in their examination of the history of the Rockwool land parcel and the surrounding area. As described by James Surkamp in his historical review “Rockwool, the cemetery and historical considerations” received by SHPO on May 3, 2019, the Dandridge connection is not the only significant history to have occurred in this area. Most of the information Mr. Surkamp uses to flesh out the story of this history is publicly available, including historic land and tax maps held by the Jefferson County Clerk and census data from the 1800’s. These data were available to the consultants, but they did not make the effort to find and study them.

This shallow effort by the consultants hired by Rockwool to understand historic values of the former Dandridge land certainly adversely affected the Cemetery and its occupants. The June 14, 2017 Survey notes the Cemetery but fails to realize the easily accessible portion of the Cemetery is a part of a much larger, older and historically significant burial ground. As described in section “[IV. THE CEMETERY BACKGROUND](#)”, old African American burial grounds, and especially enslaved persons burial grounds, do not look like what one would expect in a modern cemetery. However, the trained professionals completing these surveys should have been aware of at least some of the telltale signs of an African American burial ground, including yucca and other living markers. If the consultants had actually spent time on the ground in the Cemetery, they should have realized that the 53 burials cited in the 2005 Cemetery survey was an underestimation of the true number of modern graves, and only a portion of the total number of people laid to rest in the burial grounds. This realization would have tipped off the consultants that the Cemetery is a more significant historic site than it appears.



If the purpose of these surveys, and indeed, of the Section 106 procedure as is to investigate and evaluate the potential effects on historic places, as well as discover and uncover historic places that may not be obvious to the untrained eye, then these surveys failed miserably. The Cemetery was adversely affected by these surveys, that failed to reveal the true historic nature of the Cemetery, incorrectly assuming that it was ineligible for inclusion on the NRHP.

**e. WVSHPO did not begin a “Post-review discovery” process as described in 36 CFR § 800.13 when it received new information about the historical significance of the property on May 3, 2019 from James Surkamp.**

On April 23, 2019, Mr. James Surkamp sent a deeply researched report on the history of the Rockwool land parcel to Susan Pierce at WVSHPO. At the time, the Mountaineer Gas pipeline was being built, and the Cemetery was at critical risk as pipeline construction, including tree-clearing, trench digging and other earth moving activities proceeded along the west and north property lines of the Cemetery. Please see section [“VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION”](#) in this complaint for more information on the issues related to the pipeline. For the most part of April 2019, several descendants and community members contacted SHPO for help protecting the Cemetery, but Mr. Surkamp’s communication, with its valid conclusions and detailed research should have prompted SHPO to begin the “Post-review discovery” process as described in 36 CFR § 800.13.

As described in 36 CFR § 800.13 (b)(3) “(b) Discoveries without prior planning. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the

Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.”

A “post-review discovery” process would have allowed the Cemetery and the entire Rockwool land parcel an opportunity to be re-considered for NRHP eligibility based on new information. There is no way to know what “appropriate actions” to “resolve adverse effects” would have been recommended by WVSHPO. However, the simple fact that this process was not initiated caused an adverse disparate impact on the Cemetery, as it was denied yet again the chance to be recognized and registered as a historic place, thereby allowing the Cemetery to access and demand the protections granted for historic places by Federal law.

#### **D. Authority**

Complainants claim the WVSHPO has discriminated against the Cemetery under the following Public Civil Rights program guidelines in the United States Department of Interior, Office of Civil Rights, Civil Rights Directive 2011-01<sup>20</sup>:

F. Civil Rights Restoration Act of 1987 (Pub. L. 100-259; 102 Stat. 28), as amended, by Civil Rights Restoration Act of 1991 (Pub. L. 102-166; 42 U.S.C. 2000d) to overturn the Supreme Court’s 1984 decision in *Grove City College v. Bell*, and to restore the effectiveness and vitality of the four major federal civil rights laws that prohibit discrimination in programs, activities, and services receiving federal financial assistance. For civil rights coverage purposes, the law broadly defines the terms “program” or “activity.

J. Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations identifies as discrimination, program actions taken, which adversely affect the health and environment of minority populations (i.e., ecosystems, human health, pollution and noise, historic/religious environmental effects). The EO provides coverage for federally conducted programs,

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<sup>20</sup> United States Department of Interior Civil Rights Directive 2011-01  
[https://www.doi.gov/sites/doi.gov/files/migrated/pmb/eco/directives/upload/Civil-Rights-Directive-2011-01CProcedures-11\\_5\\_2010-wk.pdf](https://www.doi.gov/sites/doi.gov/files/migrated/pmb/eco/directives/upload/Civil-Rights-Directive-2011-01CProcedures-11_5_2010-wk.pdf)

activities, and services and notes that the same duties are relevant to federal financial assistance programs, activities, and services covered under Title VI of the Civil Rights Act of 1964.

K. EO 13160, Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs ensures equal opportunity in government educational programs, activities, and services.

Complainants argue that the first harms caused by WVSHPO in 2017 to not adequately review the Cemetery for historical context in the Section 106 process caused an adverse domino effect and “fruit from the poisonous tree” that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits which led to irreparable harm to the Cemetery, its burials, its descendants, the archaeological significance, and African American culture and heritage.

#### **E. Request**

Based upon the foregoing, Complainants request that the DOI accept this complaint and conduct an investigation to determine whether WVSHPO violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 by failing to properly implement the Section 106 procedure. The haphazard Section 106 process caused a disparate impact on the Cemetery, which was deemed not eligible for inclusion on the NRHP. The cemetery faced additional disparate impacts when the non-complaint Section 106 process was erroneously cited in subsequent permits, or in the case of the NPDES Stormwater construction permit not obtained at all, to claim that the required historic preservation considerations had been met. As a result, construction was allowed to commence without proper consideration made to the potential effects on the Cemetery.

The Complainant request that SHPO begin a “Post-Review Discovery” process as described in 36 CFR § 800.13 based on Mr. Surkamp’s report received by SHPO May 3, 2019.

The Complainants request the a “Council review of section 106 compliance” be performed per 36 CFR § 800.9. Special attention to part (c) “Intentional adverse effects by

applicants”, is requested, as construction by Rockwool after the release of the NPDES stormwater construction permit but before field surveys could evaluate structures located on the property to conclude the Section 106 process, may have been intentionally hidden from SHPO for the purpose of destroying the historic setting before it could be evaluated.

If violations of Title VI of the Civil Rights Act of 1964 are discovered and WVSHPO is unable to demonstrate a substantial, legitimate justification for its actions, and does not voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the DOI to initiate proceedings to deny, annul, suspend, or terminate DOI financial assistance to WVSHPO.

## **VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

The United States Environmental Protection Agency (EPA) awards grants on an annual basis to many state and local agencies that administer continuing environmental programs under EPA’s statutes. As a condition of receiving funding, recipient agencies must comply with EPA’s Title VI regulations, which are incorporated by reference into the grants. EPA’s Title VI regulations define a “recipient” as “any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient.” Title VI creates for recipients a nondiscrimination obligation that is contractual in nature in exchange for accepting Federal funding. Acceptance of EPA funding creates an obligation on the recipient to comply with the regulations for as long as any EPA funding is extended.

Under amendments made to Title VI, by the Civil Rights Restoration Act of 1987, a “program” or “activity” means all of the operations of a department, agency, special purpose district, or other instrumentality of a state or a local government, any part of which is extended Federal financial assistance. Therefore, unless expressly exempted from Title VI by Federal statute, all programs and activities of a department or agency that receives EPA funds are subject to Title VI, including those programs and activities that are not EPA-delegated. For example, the issuance of “state-only” water pollution control permits under programs, such as WVDEP’s oil

and gas stormwater construction permitting program, that do not derive their authority from EPA's National Pollution Discharge Elimination System (NPDES) delegation, but directly from the Clean Water Act and its WV state counterpart, are nevertheless part of a program or activity covered by Title VI regulations, if the recipient receives any funding from EPA.

### A. Federal Funding

As shown in Table 1 below, WVDEP was a recipient of financial assistance from EPA at the time of the alleged discriminatory act and remains a recipient of financial assistance from EPA.

State of West Virginia - FY 2019 Federal Programs 58

**ENVIRONMENT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE WATER POLLUTION CONTROL, SECTION 106**

**Description:**  
This grant program provides support for the basic water pollution control activities of the state. Permitting and enforcement are included in this grant.

**Grantor:** U.S. Environmental Protection Agency

**Is "Maintenance of Effort" required?** Yes

Financial Information	Fund	Fiscal Year	Organization
	8708	2019	0313
	<b>Federal</b>	<b>State</b>	<b>Local</b>
<b>Matching Formula</b>	100%	0%	0%
<b>Federal Catalog Number</b>	<b>Actual Receipts FY 2017</b>	<b>Estimated Receipts FY 2018</b>	<b>Estimated Receipts FY 2019</b>
66.419	\$1,345,300	\$1,500,000	\$2,000,000

**Comments:**  
Maintenance of Effort is \$211,947.

**ENVIRONMENT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
UNDERGROUND STORAGE TANKS**

**Description:**  
Funding for compliance monitoring and enforcement of the technical regulations concerning underground storage tanks.

**Grantor:** U.S. Environmental Protection Agency

Table 1: WVDEP financial assistance from EPA.

### B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV

General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights, Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to [Title\\_VI\\_Complaints@epa.gov](mailto:Title_VI_Complaints@epa.gov) on September 23, 2019.

### **C. Discriminatory Act(s)**

#### **1. Background on the Mountaineer Gas Route 9 Extension Project**

When a new intrastate natural gas pipeline construction project does not cross a state border, the responsibility for approval of the pipeline route falls to the individual states, and FERC does not play a role. The permitting process for such intrastate pipelines varies from state to state and may involve different federal, state, and local stakeholders. Unlike FERC's interstate pipeline siting and approval process, the intrastate process in most cases does not use a lead agency to authorize and coordinate siting and environmental reviews. Whereas FERC's process is rigorous, intrastate pipeline siting is crude and haphazard.

In a recent General Accountability Office (GAO) study, representatives from public interest groups expressed that it is more difficult for the public to comment on proposals for intrastate pipelines because the state processes are not transparent, and the public may not learn about the pipelines until after they have been approved. There is no uniform standard for right-of-way agreements and eminent domain authority, and procedures vary by state. Overall, it concluded that the intrastate process is challenging to navigate and can put federally protected resources, including cultural resources at risk. The lack of meaningful public participation was noted as a contributing factor to poor outcomes of environmental and socio-economic impacts.

That is the case in West Virginia. Mountaineer had to overcome only two regulatory hurdles in getting its pipeline project built:

1. Public Service Commission (PSC) approval of a customer rate tariff allowing them to charge existing customers throughout the state to pay the extra amount in their every month gas bills to fund the Route 9 Expansion Project; and

2. WVDEP approval of a Construction Stormwater General Permit Registration allowing them to begin to trench and place the pipeline into the ground.

For both approvals, the level of stakeholder involvement required was minimal. In fact, the citizens of Berkeley County and Jefferson County had no firm idea of the path the pipeline would take until the Stormwater Permit went final on March 29, 2019. Maps released when the permit went out for a formal 30 day comment period, January 25 to February 25, 2019, were the wrong maps. Moreover, the public was denied a promised public hearing.

## **2. Discriminatory WVDEP Policies and Procedures**

WVDEP's policies and practices in issuing Mountaineer's Route 9 Expansion Project stormwater permit violated U.S. Civil Rights Act Title VI disparate impact regulations. The following THREE acts that involve discriminatory policies and practices are at issue:

**1. The permit applicant provided incorrect mapping and documentary easements; WVDEP failed to check their veracity or accuracy;**

**2. The permit applicant proposed and then used illegal construction standards; WVDEP failed to notice that the pipeline would be installed in prohibited areas;**

**3. WVDEP prevented public input during the permitting process and hid the details of the revised pipeline route until it was too late;**

Each of these WVDEP policies and procedures are discussed in detail below.

**a. The permit applicant provided incorrect mapping and documentary easements; WVDEP failed to check their veracity or accuracy**

### **i. Property Ownership and Easement Errors**

Because WVDEP permit reviewers rely exclusively on the permit applicant to provide correct construction standards and details, including correct right of ways and easements, errors can be introduced into the permitting process when the applicant is either mistaken or purposely obscures the facts. Some errors can be significant. The WVDEP policy of not verifying—even

spot checking—basic information provided by the applicant is potentially harmful to program outcomes, including preserving compliance with Title VI. In the case of Mountaineer, errors in the permit application not caught or corrected by the permit reviewer caused disparate harm to the Complainants.

Mountaineer maps submitted to WVDEP in the permit application had several property ownership discrepancies. Mountaineer inaccurately mapped the A.M.E. Church property as being (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property. ([Exhibit HH and II](#)). Note the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property is next to the A.M.E. Church property and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy did not have to give a pipeline easement ([Exhibit JJ](#)).

On April 19, 2019, Mountaineer recorded an easement in the Jefferson County Clerk's Office which included the A.M.E. Church property ([Exhibit KK](#)). It is unclear how Mountaineer Gas could have received easement permission from (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to go through the A.M.E. Church property with the gas pipeline. As stated in subsection "[4. African Methodist Episcopal Church of Kearneysville Affiliation](#)" of this complaint, no trusteeship or transfer of ownership has been discovered associating (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the A.M.E. Church or its property. This is a case of a blatant theft of property rights.

WVDEP approval of Mountaineer Gas' pipeline route and maps has resulted in the possible disturbance or removal of burials at the A.M.E. Church as well as destroying the archaeological integrity of the area.

## **ii. Incorrect Boundaries**

WVDEP permit review did not notice that Mountaineer's pipeline plans show the Cemetery property boundaries incorrectly and drastically reduced in size. ([Exhibit HH](#)) and ([Exhibit LL](#)) Mountaineer claims in the Plan Set submitted with the permit application that "Boundary lines as shown herein are primarily based on tax parcel information derived from GIS databases. Accuracy is not verified." It is unclear where this error could have come from, as the Jefferson County GIS tax maps do show the correct Cemetery property boundary.

If it was advantageous to the permit applicant to shave corners off a Title VI-protected community's significant historical, cultural, and archeological resources in order to enable the



pipeline to go through, then who is to stop them? The permit writer does not look, the professional engineer hired by Mountaineer who stamps the plans admits that accuracy is not verified, and members of the public—including Title VI-protected stakeholders who could have in one glance told the permit writer this is an inaccurate representation of the Cemetery—could not view the maps. Not only that, but the maps and route were changed only one week before the permit was granted.

In addition to the incorrect property boundary, Mountaineer’s maps show only a small shaded area to be the Cemetery. But, as documented in our ground-penetrating radar survey, there are many graves located outside of this shaded area and along the Cemetery’s property boundaries. Again, such information could have been brought forth in a transparent stakeholder involvement permitting process, but WVDEP policy and procedures prevented that.

One might ask, “How can a WVDEP permit writer check on the accuracy of a map—is that their job?” The answer is simple: just look at the Stormwater Permits that have already approved in the same area. For example, Mountaineer’s maps of the Cemetery boundaries and size differ significantly with Rockwool’s stormwater construction site maps which correctly depict the correct boundaries and had already been approved by the same permit writer. ([Exhibit AA](#))

Another question might be: what is the significance of a little discrepancy in boundary lines? Mountaineer’s incorrect boundaries of the Cemetery could not allow for proper construction setbacks. Graves outside of the shaded area and incorrect boundaries have been put at risk of being disturbed and the back portion of the Cemetery abutting Rockwool’s property has already been disturbed. Such disturbance means irretrievable loss of archeological setting and possibly remains and materials. For the Title VI-protected individuals whose ancestors lay in that Cemetery, that small boundary difference meant the whole world.

### **iii. Limits of Disturbance (LOD) errors and alignment of the pipeline**

The WVDEP permit reviewer needs an accurate estimate of the amount of land expected to be disturbed during construction as well as the total linear extent of any proposed pipeline. Unfortunately, Mountaineer provided estimates that varied from document to document and

changed during the permitting process. Moreover, the routing of pipeline changed significantly in the middle of the formal public comment period and the public was not informed. Because of the cancellation of the public hearing that was at first advertised and then rescinded, no one was aware of these changes. The only allowed comments were written ones based on the inaccurate maps. Also concerning is that the U.S. Fish and Wildlife consultation letter on possible Endangered Species Act (ESA) impacts was based on incorrect data.

	LOD (acres)	Pipeline Length (miles)
Nov. 21, 2018 Karst Survey	unknown	7.9
Dec. 7, 2018 Permit Application	31.34	7.9
Jan. 25, 2019 Public Notice	32.64	4.93
Feb. 2018 SWPPP	25.38	4.85
USFWS Consult. Letter	17	6.57
March 29, 2019 Permit Approval Letter	25.38	4.85

Table 2: Limits of disturbance (LOD) and pipeline alignment of Mountaineer Gas Route 9 Extension Project cited in different documents

**b. The permit applicant used illegal construction methods; WVDEP failed to notice that the pipeline would be installed in prohibited areas.**

**i. Illegal construction**

Intrastate pipeline siting, unlike the FERC siting process, has no oversight. The planned routes and methods of construction--as in the case of the Route 9 Extension Project--have very little scrutiny. Mountaineer is trusted to identify and comply with applicable federal, state, and local rules and regulations in order to legally place pipe in the ground. But who checks on that? The WVDEP permit reviewer's role is limited. Their focus is on the appropriateness of sediment

and erosion controls. But what if those controls are placed in an entirely prohibited area? Is there a consequence to the failure of WVDEP to have any kind of responsibility to determine if the sediment and erosion controls that they approve are even approvable, if the location and method of construction is illegal?

General Permits, like the Oil and Gas Construction Stormwater Permit, are set up with basic requirements well known and pretty much boilerplate. Everything from the applicant gets entered into WVDEP's Electronic Submission System (ESS), which makes for a useful "checklist" type of approach, but fails to require truthfulness or accuracy. The days of permit writers meeting the company engineer to pore over site plans are gone.

One significant state pipeline construction standard, put forth in an October 1, 2018, WV Department of Transportation, Division of Highways, Memorandum<sup>21</sup> was missed by both Mountaineer and the WVDEP permit reviewer. That memo is addressed to "All District Engineers/Managers" and signed by Thomas J. Smith, P.E., Secretary of Transportation and Commissioner of Highways ([Exhibit MM](#)).

The key phrases are extracted here:

**"SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS**

**A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS**

**1. GENERAL**

... Longitudinal pipeline installations are not permitted within the DOH Right of Way.

...

**B. NON-CONTROLLED/LIMITED ACCESS HIGHWAYS**

**1. GENERAL**

Non-CA Highways include 1-lane, 2-lane or multi-lane roadways with no type of access control, such as US, WV, County Routes, HARP (Home Access Road Program Routes) and State Forest Routes under the control of DOH. Longitudinal pipeline installations are not permitted within the DOH Right of Way."

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<sup>21</sup> WV Department of Transportation, Division of Highways, October 1, 2018, Memorandum [https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements\\_signed%20by%20CC\\_Oct%202018.pdf](https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements_signed%20by%20CC_Oct%202018.pdf)

The memo states that it: “provides additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of *THE ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.”

Is it possible this guidance applies to all portions of the Mountaineer Route 9 Extension Project where pipeline was installed longitudinally in the DOH Right of Way? That would definitely include the stretch along Coast Guard Lane, which is a marked County Route 9/57; as well as all of Good Folks Road, which is marked County Route 48/3. In both of these cases, Mountaineer pipeline was installed longitudinally and within the DOH ROW. ([Exhibits NN and OO](#)).

The guidance does not address the longitudinal installation of pipeline within the DOH ROW of a bike lane which borders on a Controlled Access Highway, i.e. Route 9. Our Complaint covers that concerning issue in Section “[VII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION](#)” of this complaint, addressed to the FHWA.

It is our contention that the Mountaineer Pipeline was illegally installed in several key places, perhaps as much as half its entire route (2.4 miles out of the total 4.85 linear miles). The WVDOH permit reviewer was either unaware of this guidance memo or ignored it. Did Mountaineer Gas know about the memo? That is their job. How about the WVDOH engineer who processed the DOH Encroachment and Utilities Installation Permits--was he or she aware of this prohibition? Because the Complainants contend that they should have known and therefore prevent the Title VI violation and discriminatory harm, both USDOT and FHWA are named in this Title VI complaint (Sections “[VI. RECIPIENT: WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS](#)” and “[VII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION](#)”).



### **c. WVDEP prevented public input and hid changes to the permit**

WVDEP decided that due to expressed public interest and concern, the Oil & Gas Construction Stormwater Application for Mountaineer's Route 9 Extension Project would go to public review. The review was to include a 30 day period of public comment and a scheduled public hearing. WVDEP required Mountaineer to pay for placing an advertisement in the Legal Notice section of the Martinsburg Journal and the Department of Water and Waste Management (DWWM)<sup>22</sup>, the subunit of WVDEP responsible for stormwater permitting, wrote the text for the advertisement ([Exhibit PP](#), Public Notice No. SM-4-2019). They subsequently placed it in the Journal. It ran in the evening edition of a single day: Friday, January 25, 2019 ([Exhibit QQ](#)).

There is no certified copy of that placement in the administrative record, which is a violation of WVDEP procedure. The copy we obtained was in a repository of WVDEP responses to a FOIA request from (b) (6) Privacy, (b) (7)(C) Enforcement as part of the evidentiary proceedings in his EQB appeal of the permit (see discussion in subsection "[G. Pending Administrative Reviews](#)"). The photocopy of the actual newspaper notice was provided by (b) (6) Privacy, (b) (7)(C) Enforcement Eastern Panhandle Protectors.

The following WVDEP policies and procedures used during the Public Comment period constitute violations of Title VI and resulted in disparate harm to the Cemetery and Complainants:

#### **i. The stated activity in Public Notice No. SM-4-2019 is incorrect.**

As this language was written by DWWM, the error falls to WVDEP. The Activity changed significantly during the comment period (ran from January 25 — February 25, 2019), as DWWM well knew. On February 18, 2019, with 1 week remaining in the comment period, DWWM instructed Mountaineer to remove their application from the ESS and submit a new one. [Exhibit RR](#) shows the time/date stamp of all the ESS uploads associated with the permit, and the activity on 2/14 and 2/18/2019 is significant. The resubmitted application was never re-advertised, as it should have been, so the application that public commenters had to work with was the old one. Significant changes in the 2/18/2019 non-advertised resubmittal include:

<sup>22</sup> <https://dep.wv.gov/WWE/Pages/default.aspx>

- **REMOVAL** of 5.96 acres of LOD;
- **SHORTENING** the linear extent of the pipeline by 3.05 miles;
- **CANCELLING** the installation of pipeline near the (wealthy) sub-divisions, (influential) residential properties, and (profitable and influential) commercial enterprises in Berkeley County;
- **RE-ROUTING** the pipeline so that it is now placed directly on top of the worst sinkhole (No. R9E-2) identified in the Nov. 21, 2018, GeoConcepts Report;
- **RE-ROUTING** the pipeline so it would now be constructed within INCHES of historic remains of the African Methodist Episcopal (A.M.E.) Church and suspected burial grounds;

**ii. The February 21, 2019 scheduled Public Hearing at the Ranson Civic Center was cancelled. WVDEP refused to reschedule another one.**

Instead, they approved the permit summarily on March 29, 2019 ([Exhibit SS](#)) —an action that was opposed by DWWM staff, but overridden at the highest level: the WVDEP Secretary himself, Austin Caperton, a longtime coal executive and cousin of former Gov. Gaston Caperton.

<sup>23</sup> The following April 5, 2019, news article<sup>24</sup> sums it up:

“As early as last November, citizens of the Eastern Panhandle began contacting the DEP to request a public hearing on the pipeline extension.

In mid-January, the DEP contacted (b) (5) Privacy, (b) (7)(C) Enforcement to let her know the hearing would be scheduled due to the high level of public interest.

At a different DEP hearing on January 30th, representatives of the DEP told members of the public that the pipeline hearing would have to be rescheduled due to a conflict at the Ranson Civic Center.

“Since then, we have been in constant contact with the DEP,” (b) (5) Privacy, (b) (7)(C) said. “At first, the agency informed us that they were having trouble finding a venue. By the end of February, after the originally scheduled date had passed, officials gave us the no comment treatment when asked about the hearing. Then, on March 6, an official stated that someone from Ranson has told him that ‘they couldn’t guarantee the DEP’s safety.’”

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<http://wvmetronews.com/2017/01/13/coal-exec-austin-caperton-cousin-of-former-gov-gaston-caperton-to-oversee-environmental-agency/>

<sup>24</sup> <https://morgancountyusa.org/?p=3992>

“Finally, our local elected officials got involved and requested the hearing on our behalf. This was to no avail. The DEP did what they probably planned to do from the start, regardless of citizens’ concerns: approve the permit and allow pipeline work to begin.””

#### **D. Adverse Impacts**

Since a proper archaeological survey was never performed by WVSHPO and the lack of oversight by the WVDEP regarding Mountaineer Gas' pipeline route on the A.M.E. Church property, it may be impossible now to determine if graves were there and disturbed by the pipeline construction. We are not aware of a Mountaineer Gas archaeologist being present during pipeline construction. Failure to follow these procedures has resulted in the possible disturbance or removal of burials near the Cemetery as well as destroying the archaeological integrity of the area.

The following adverse impacts have occurred:

##### **1. Construction fence installed**

Without permission or notice, on April 9 & 10, 2019, construction fence was installed inches away from unmarked graves. ([Exhibit TT](#)) Not only was this disrespectful and may have caused damage to graves, it gave the impression that the Cemetery should not be visited.

##### **2. Tree cutting**

On April 15, 2019, Mountaineer Gas or their contractor was video recorded clear cutting trees along the Cemetery boundary and cut into the Cemetery farther than necessary.<sup>25, 26</sup> One tree was removed beyond Rockwool’s proposed property marker stake ([Exhibit UU](#)). Other trees and their limbs were damaged and precariously hung into the Cemetery. These damaged trees and limbs were a risk to individuals’ safety visiting the Cemetery and to the Cemetery burials. Also, these trees could be slave burial markers.

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<sup>25</sup> <https://www.facebook.com/easternpanhandleprotectors/videos/379181332681660/>

<sup>26</sup> <https://www.facebook.com/easternpanhandleprotectors/videos/169977890595221/>



### **3. Blocking Road - Pipeline Construction**

From April to May 2019, the gas pipeline construction near the Cemetery caused the descendants and Cemetery visitors many hardships and obstacles trying to visit the Cemetery. On May 2, 2019, the only access to the Cemetery, Granny Smith Lane, was completely blocked by Mountaineer Gas' pipeline construction activities. ([Exhibit - VV](#)) This denial of Cemetery access and other construction activities created a hostile environment and violated the descendants' and Cemetery visitors' rights under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc.

#### **E. Authority - WV Department of Environmental Protection**

EPA guidance provides that the External Civil Rights Compliance Office (ECRCO) will accept for processing only those Title VI complaints that include at least an allegation of a disparate impact concerning the types of impacts that are relevant under the recipient's permitting program. The discriminatory policies and procedures outlined in subsection "[2. Discriminatory WVDEP Policies and Procedures](#)" are directly connected to how WVDEP currently reviews and issues registrations under the Oil and Gas Construction Stormwater General Permitting Program. In particular, the lack of a meaningful public participation element to the granting of registrations under the General Permit led directly to disparate harm to the Title VI-protected community of African American descendants of the Cemetery and prohibited them from exercising their basic right of egress to the cemetery and enjoyment of that special space. Two simple things that WVDEP could have done to prevent the disparate harm from happening were to: 1. Not allow a revision of the proposed pipeline route without seeking public input; and 2. Listen to and respect the pleadings of the potentially impacted parties before the harm occurred.

#### **F. Justification and Less Discriminatory Alternatives**

"If the recipient can neither rebut the initial finding of disparate impact nor develop an acceptable mitigation plan, then the recipient may seek to demonstrate that it has a substantial, legitimate interest that justifies the decision to proceed with the agency action notwithstanding the disparate impact." Interim Guidance at 4. "[T]here must be some articulable value to the



recipient in the permitted activity.” Id. at 11. “The justification must be necessary to meet ‘a legitimate, important goal integral to [the recipient’s] mission.’”

Enabling the installation of a natural gas pipeline to provide up to 47,500 Dekatherms per day (Dth/d) of incremental firm transportation service to the Rockwool Ranson facility is not WVDEP’s mission. Protecting human health and the environment when the pipeline company applies for a stormwater control permit to undertake that action is. WVDEP’s official mission statement has changed over the years, evolving from this: “Use all available resources to protect and restore West Virginia’s environment in concert with the needs of present and future generations.”<sup>27</sup> to this: The West Virginia Department of Environmental Protection’s mission is to promote a healthy environment. To do this, the agency must protect the environment while leaving room for a sustainable industry base. Such a task requires careful balance. Its major divisions – protecting air, land, and water – plus an office regulating the oil and gas industry, must be circumspect and fair in regulating industry, permitting extraction of natural resources and protecting the public from potential pollution hazards.”<sup>28</sup> Nevertheless, we believe a sustainable industry base should not translate into violating Civil Rights.

A less discriminatory alternative to the Title VI-violating policies and procedures in place at the WVDEP today would be to install a fair and impartial General Permitting process that does not violate Civil Rights.

#### **G. Pending Administrative Reviews**

In certain circumstances, EPA may decide that a complaint will be “closed” because a pending administrative review or appeal which “could affect the circumstances surrounding the complaint and any investigation that ECRCO may conduct.” In such cases, EPA may “may waive the 180 day filing time limit if the complaint is filed within a reasonable time period after the conclusion of the administrative appeal process.” There is an active appeal of Mountaineer’s General Permit Registration at DEP’s Environmental Quality Board (EQB). On April 29, 2019,

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<sup>27</sup> <https://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/Risk%20Assessment%20Guide.pdf>

<sup>28</sup> <https://dep.wv.gov/pio/Documents/2016-17%20Annual%20Report.pdf>

(b) (6) Privacy, (b) (7)(C) Enforcement Privac filed a timely appeal to Mountaineer's permit.<sup>29</sup> It was based on Mountaineer's failure to comply with the Endangered Species Act (ESA). Moreover, all of the Route 9 extension pipeline construction is complete and the disparate harm already done to the Complainants. The EQB has pushed (b) (6) Privacy, (b) (7)(C) Enfor evidentiary hearing back twice already; it will not happen until Dec. 12-13, 2019. The Complainants here are not a party to that appeal. Its disposition has no bearing on our Title VI complaint.

## **H. Request**

Based upon the foregoing, Complainants request that the EPA OECR accept this complaint and conduct an investigation to determine whether WVDEP violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 in the issuance of Mountaineer Registration No. WVR311281 on March 29, 2019. If a violation is found and WVDEP is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the USEPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to WVDEP.

## **VII. RECIPIENT: WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS**

The United States Department of Transportation (USDOT) awards funding on an annual basis to many state DOTs that administer continuing highway construction, maintenance, and other programs under USDOT statutes. As a condition of receiving funding, recipient agencies must comply with USDOT's Title VI regulations, which are incorporated by reference into the grants. Title VI creates for recipients a nondiscrimination obligation that is contractual in nature in exchange for accepting Federal funding. Acceptance of USDOT funding creates an obligation on the recipient to comply with the regulations for as long as any USDOT funding is extended.

<sup>29</sup> (b) (6) Privacy v. Director, Division of Water and Waste Management, DEP, and Mountaineer Gas. EQB Appeal No. (b) (6) Privacy-EQB. It was Certified at EQB on May, 15, 2019, and an evidentiary hearing set for May 23, 2019. His request to stop work on the pipeline installation and stay the permit was denied. The hearing was rescheduled to Aug. 8-9, 2019. It was for a second time rescheduled, now set for Dec. 12-13, 2019.

## A. Federal Funding

As shown in Table 2 below, the WV Division of Highways (DOH) within the WVDOT was a recipient of financial assistance from USDOT at the time of the alleged discriminatory act and remains a recipient of financial assistance.

The screenshot shows a PDF document titled "B02\_FY\_2019\_14346.pdf" from the website "www.wvlegislature.gov/legisdocs/reports/agency/B02\_FY\_2019\_14346.pdf". The document contains two main sections: "TRANSPORTATION DIVISION OF HIGHWAYS" and "TRANSPORTATION DIVISION OF PUBLIC TRANSIT".

**TRANSPORTATION DIVISION OF HIGHWAYS**

**OTHER FEDERAL AID PROGRAMS**

**Description:**  
Construction, maintenance, planning and/or research on federal-aid eligible routes that are not classified as Interstate or Appalachian Development Highway System routes.

**Grantor:** U.S. Department of Transportation

**Is "Maintenance of Effort" required?** No

	Fund	Fiscal Year	Organization
Financial Information	9017	2019	0803
	Federal	State	Local
Matching Formula	80%	20%	0%
Federal Catalog Number	Actual Receipts FY 2017	Estimated Receipts FY 2018	Estimated Receipts FY 2019
97.089	\$291,800,064	\$296,840,000	\$283,360,000

**TRANSPORTATION DIVISION OF PUBLIC TRANSIT**

**SECTION 5305 STATE PLANNING AND RESEARCH PROGRAM**

**Description:**  
This is a continuous grant program that provides technical and planning assistance to the state's transit providers. This grant also provides funding for the Division to administer this program.

**Grantor:** U.S. Department of Transportation

**Is "Maintenance of Effort" required?** No

	Fund	Fiscal Year	Organization
Financial Information	8745	2019	0805
	Federal	State	Local

Table 3: WV Division of Highways (DOH) within the WVDOT was a recipient of financial assistance from USDOT.

## B. Timeliness of Complaint

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to the Department of Transportation,



Departmental Office of Civil Rights, 1200 New Jersey Ave, S.E., Washington, DC 20590 on September 23, 2019.

### **C. Discriminatory Act**

The alleged discriminatory act on the part of West Virginia Department of Transportation (WVDOT) Division of Highways (DOH) is the failure to provide legal and appropriate Right of Way (ROW) clearances and to ignore the publication of a WVDOT guidance which expressly prohibits the installation of natural gas pipeline in the longitudinal path of a WV roads; these two discriminatory acts contributed to the Title VI-violating issuance to MOUNTAINEER GAS COMPANY (Mountaineer) of Registration No. WVR311281, March 29, 2019, under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities ([Exhibit SS](#)).

This registration covered the discharge of stormwater associated with the disturbance of approximately 25.38 acres of land and consists of the installation of approximately 4.85 miles of natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia. The project included access roads, 12.22 acres entirely within the DOH Right-of-way and 13.16 acres of private Right-of-way. [Exhibit WW](#) is a closeup of the Overall Site Map, which says, “Right of Way information provided by West Virginia Division of Highways District 5.”

In a guidance memo put forth on October 1, 2018, addressed to “All District Engineers/Managers” and signed by Thomas J. Smith, P.E., Secretary of Transportation and Commissioner of Highways ([Exhibit MM](#)), the WV Department of Transportation, Division of Highways Memorandum,<sup>30</sup> prohibits longitudinal pipeline installation in the DOH right of way. This applies to both Controlled Access Highways and all State and County Roads. The key phrases are excerpted here:

“SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS  
A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS  
1. GENERAL

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<sup>30</sup> WV Department of Transportation, Division of Highways, October 1, 2018, Memorandum [https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements\\_signed%20by%20CC\\_Oct%202018.pdf](https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements_signed%20by%20CC_Oct%202018.pdf)

... Longitudinal pipeline installations are not permitted within the DOH Right of Way.

...

## B. NON-CONTROLLED/LIMITED ACCESS HIGHWAYS

### 1. GENERAL

Non-CA Highways include 1-lane, 2-lane or multi-lane roadways with no type of access control, such as US, WV, County Routes, HARP (Home Access Road Program Routes) and State Forest Routes under the control of DOH. Longitudinal pipeline installations are not permitted within the DOH Right of Way.”

The memo states that it: “provides additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of *THE ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.”

We contend that his guidance applies to all portions of the Mountaineer Route 9 Extension Project where pipeline was proposed to be and actually was installed in longitudinal fashion along the side and within the legal limits of the DOH right of way. That would definitely include the stretch along Coast Guard Drive, marked County Route 9/57; as well as all of Good Folks Road, marked County Route 48/3. In both of these cases, Mountaineer pipeline was installed longitudinally within the DOH ROW. ([Exhibits NN and OO](#)).

Moreover, we believe that Mountaineer knew about the prohibition--or at least learned about it around February 14, 2019, when they replaced illustrations in their WVDEP application of obvious intent to install in the longitudinal (i.e., along with the traffic) course of the DOH rights of way ([Exhibits XX](#)). Mountaineer pipeline was illegally installed in several key places, perhaps as much as half its entire route (2.4 miles out of the total 4.85 linear miles). [Exhibits YY](#) shows the actual longitudinal installation occurring on Coast Guard Drive.

The DOH District Engineer was either unaware of this guidance memo or ignored it. The DOH District 5 office had to collect road bonds and agreements (Encroachment Permits) prior to

Mountaineer beginning these illegal installs, and therefore they are complicit. Because we contend that DOH should have known and said nothing, WVDEP granted Mountaineer a flawed construction stormwater permit that resulted in pipeline installation and disparate harm to the Complainants.

#### **D. Authority - WV Department of Transportation, Division of Highways**

DOT guidance also requires a Title VI complaint to move forward only if it includes at least an allegation of disparate impact concerning the types of impacts that are relevant to the recipient's construction, maintenance, and other planning, research, and USDOT rule implementation programs. As discussed in subsection "[C. Discriminatory Act](#)" of this section, DOH has an affirmative requirement to oversee, approve, and inspect all Utility Installations that occur within a DOH Right of Way ROW). In addition, to individual crossing permits that are required for each location at which the pipeline transversely crosses a state-managed highway, it also maintains oil and gas information sheets on pipelines requesting installations that are in or impact on the DOH ROW. Coring requests where a pipeline crosses under a road must include Plan Profiles and Cross-Section Views. A Traffic Control Plan must be submitted. Finally, a DOH inspector must inspect the pipeline crossing work when it is finished. Given all of those interactions and mission requirements, it begs disbelief how the official October 15, 2018, DOH Guidance<sup>31</sup> that PROHIBITS the installation of natural gas pipelines of any sort in the longitudinal ROW of any state road could have been overlooked. The disparate impact suffered by the Cemetery descendants could have been avoided if the DOH engineers responsible for the Mountaineer project had done their job.

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[https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements\\_signed%20by%20CC\\_Oct%202018.pdf](https://transportation.wv.gov/highways/maintenance/Documents/Oil%20and%20Gas%20Pipeline%20Crossing%20Requirements_signed%20by%20CC_Oct%202018.pdf)



### **E. Request**

Based upon the foregoing, complainants request that the USDOT accept this complaint and conduct an investigation to determine whether WVDOT violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for the failure to prevent Mountaineer Gas from installing a natural gas pipeline in the longitudinal stretch of two WVDOT-maintained county roads: Coast Guard Lane and Good Folks Road, against the expressed WVDOT guidance prohibiting such an action. If a violation is found and WVDOT is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, complainants further petition the USDOT to initiate proceedings to deny, annul, suspend, or terminate USDOT financial assistance to WVDOT.

## **VIII. RECIPIENT: THE FEDERAL HIGHWAY ADMINISTRATION**

The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation (USDOT) that supports State and local governments in the design, construction, and maintenance of the Nation's highway system (Federal Aid Highway Program) and various federally and tribal owned lands (Federal Lands Highway Program). Through financial and technical assistance to State and local governments, the Federal Highway Administration is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world.<sup>32</sup>

### **A. Funding**

Unlike the USDOT that has state agency DOT counterparts, and which are the recipient of federal program funds and grants, the FHWA administers their programs directly to the states, via direct disbursement of highway funds and maintenance of FHWA offices in each state and region. FHWA has its own Office of Civil Rights with unique responsibilities for ensuring Title VI compliance in the state agencies and activities that involve the use of federal highway dollars.

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<sup>32</sup> <https://www.fhwa.dot.gov/about/>

FHWA Program Areas in which they provide direct assistance to WVDOT include the following:

- Acquisition Management
- Infrastructure
- Planning, Environment, and Realty
- Safety

The two program areas most relevant to this Complaint are 1. Infrastructure and 2. Planning, Environment, and Realty. Infrastructure oversees the use of highway funds to build and maintain highway-associated bicycle and pedestrian projects. The Intermodal Surface Transportation Act of 1991 (ISTEA) first authorized federal transportation dollars to be spent on bicycle and pedestrian projects. The Transportation Equity Act of 1998 (TEA-21) was the first time federal dollars were authorized to be spent on bicycle pedestrian projects within Interstate Highway Corridors.

Note that Federal interstate highway funds can only be used for bicycle and pedestrian facilities if they are in the highway right of way. That is the case with the Route 9 Bike Path.

## **B. Timeliness of Complaint**

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. WVDEP's issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. Three days later, on April 2, 2019, Mountaineer began to trench and install pipeline. The date of harm for both these actions is within the 180 day limitations period which ends September 24, 2019, and September 27, 2019, respectively. This complaint was sent by overnight delivery on September 22, 2019 to the Federal Highway Administration, U.S. Department of Transportation, Office of Civil Rights,



1200 New Jersey Avenue, SE, 8th Floor E81-105, Washington, DC 20590. It was also emailed on September 23, 2019, to [FHWA.TitleVIcomplaints@dot.gov](mailto:FHWA.TitleVIcomplaints@dot.gov)

### **C. Discriminatory Act**

When Mountaineer decided to place the natural gas pipeline in the longitudinal extent of the Route 9 Bikepath, a multi-modal feature that was designed into the federally-funded Route 9 extension from Martinsburg to Charles Town, they were doing a very unusual thing. We have come up with no other example of a gas pipeline that was--after the fact--installed into a newly built federal-dollar bike path. There are some examples, in congested older locations in New York and New Jersey, where a bike path was built alongside an older highway that shared a utility such as natural gas, sewer, or water. But none has been found that purposefully used a bike path right of way that paralleled a limited access highway for running a gas pipeline.

We believe that is not the purpose of multi-modal projects such as bike paths, funded by the federal government. The ease with which Mountaineer was able to lay their pipe (there were no shared use--they blocked the path off, preventing public access for weeks at a time ([Exhibit ZZ](#)) and the fact that no construction access road had to be built, as they could drive their equipment up onto the paved bike path ([Exhibit AAA](#)) resulted in a very quick installation. This impacted the Cemetery because with the WVDEP granting the construction stormwater permit as fast as they did, and with WVDEP obscuring the path details and refusing to hold a public hearing, no one knew what was happening until it was all over.

This adverse effect was discriminatory in that it meant the burden of having a gas pipeline run alongside the African American Cemetery was a burden not shared by the majority of the citizens of Berkeley County and Jefferson County. However, these same citizens will be able to enjoy the benefits of natural gas, and can now plan their home renovations to take advantage of that newly available resource and disconnect those tiresome old propane log fireplaces in their sunken living rooms.

In addition, maintenance provisions require bicycle and pedestrian facilities built with Federal funds to be maintained in the same manner as other roadway assets.

- Public rights-of-way and facilities are required to be accessible to persons with disabilities through the following statutes: Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. §794) and Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12131-12164).

- The DOT Section 504 regulation requires the Federal Highway Administration (FHWA) to monitor the compliance of the self-evaluation and transition plans of Federal-aid recipients (49 CFR §27.11), including Title VI compliance. The FHWA Division offices review pedestrian access compliance with the ADA and Section 504 as part of their routine oversight activities as defined in their stewardship plans. They have to begin monitoring for Title VI compliance as well, now that a precedent has been set of using bicycle and pedestrian features to quickly throw down fracked-gas distribution lines to the Rockwools of the world.

#### **D. Authority**

The Office of Civil Rights manages FHWA responsibilities with respect to Title VI, including assuring that FHWA Division Offices ensure that all Recipients (State Transportation Agencies) have an approved Title VI Plan and submit Annual Update Reports. Additionally, the Division Offices are responsible for ensuring that the State Transportation Agencies are implementing an effective Monitoring Program of their Subrecipients' efforts to effectively implement Title VI. FHWA's National Title VI/Nondiscrimination Program Manager is responsible for coordinating the effectiveness of FHWA's monitoring activities and will partner with other Federal Program Offices and USDOT Modal Agencies (as appropriate) to address opportunities for improved implementation of the Title VI/Non-discrimination Program.<sup>33</sup>

#### **E. Request**

Based upon the foregoing, complainants request that the FHWA accept this complaint and conduct an investigation to determine whether WVDOT violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. by allowing, either through an affirmative action or a failure of monitoring and oversight, the construction of a natural gas

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<sup>33</sup> [https://www.fhwa.dot.gov/civilrights/programs/title\\_vi/](https://www.fhwa.dot.gov/civilrights/programs/title_vi/)

pipeline in the longitudinal stretch of a FHWA-funded bicycle and pedestrian path adjacent to a FHWA-funded limited access highway; said allowance resulting in a disparate harm to an African American Cemetery and its descendents. If a violation is found and WVDOT is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, complainants further petition the FHWA to initiate proceedings to deny, annul, suspend, or terminate financial assistance and program support of WVDOT.

## **IX. RECIPIENT: JEFFERSON COUNTY COMMISSION**

The Jefferson County Commission (JCC) is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia, validly created and existing under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State.

The JCC agency, Jefferson County Historic Landmarks Commission (JCHLC); JCC department, Jefferson County Office of Engineering; and the Jefferson County Clerk are listed in this complaint for failure to follow policies and procedures or have established policies and procedures to prevent discrimination, which has resulted in disparate impacts to the Cemetery; its Descendants; African American history, culture, and heritage.

### **A. Federal Funding**

Federal funding has benefited Jefferson County and the JCC mostly as pass through funding from West Virginia state agencies. As listed in the Department of Justice manual, “The financial assistance does not have to relate to a program in which the complainant participates or seeks to participate or used for the complainant’s benefit. Rather, an agency only has to prove that the entity received federal financial assistance when the alleged discrimination occurred.”<sup>34</sup> Jefferson County Historic Landmarks Commission received direct grants when the alleged discrimination occurred.

### **Jefferson County Commission Federal Funding 2017 - 2019**

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<sup>34</sup> Department of Justice Manual, page 27 <https://www.justice.gov/crt/case-document/file/934826/download>



<b>Fed. Agency</b>	<b>Action Date</b>	<b>Award ID</b>	<b>Amount</b>
DOH/FHA	01/19/2017	<a href="#">540340063Z001</a>	\$80,000
DOH/FHA	06/05/2017	<a href="#">540340030Z001</a>	\$336,000
DOH/FHA	06/29/2017	<a href="#">540340063Z001</a>	\$240,000
DOH/FHA	05/31/2017	<a href="#">5409WV003M302</a>	\$355,261
DOH/FHA	04/10/2018	<a href="#">540340063Z001</a>	\$80,000
DOH/FHA	04/10/2018	<a href="#">540051046MS30</a>	\$79,946
DOH/FHA	05/04/2018	<a href="#">540230006Z240</a>	\$655,324
DOH/FHA	05/23/2018	<a href="#">540230006Z240</a>	\$500
DOH/FHA	08/13/2018	<a href="#">540009174L20E</a>	\$2,881
DOH/FHA	01/23/2019	<a href="#">693JJ21930000Z231 WV0009226</a>	\$40,000
DOH/FHA	04/01/2019	<a href="#">540164004MS5E</a>	\$9,311
DOH/FHA	09/04/2019	<a href="#">693JJ21930000ZS50 WV0929001</a>	\$162,000

### **1. The Jefferson County Historic Landmark Commission**

The Jefferson County Historic Landmark Commission has received at least three grants from the Department of the Interior, through the National Parks Service, during the time described in this section.

#### **Jefferson County Historic Landmarks Commission DOI/NPS Federal Funding 2017 - 2019**

<b>Action Date</b>	<b>Award ID</b>	<b>Amount</b>
04/14/2017	<a href="#">P17AP00098</a>	\$44,526
08/08/2017	<a href="#">P17AP00011</a>	\$956,625
03/07/2019	<a href="#">P19AP00006<sup>1</sup></a>	\$613,930

<sup>1</sup> In partnership with Jefferson County Farm Land Protection Board. Fund description “To assist States and local communities acquire and preserve threatened battlefield land from the Revolutionary War, War of 1812, and Civil War.”

## **B. Timeliness of Complaint**

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The Complainants assert that the most recent adverse interaction with the JCHLC and the Cemetery occurred on June 18, 2019 at the JCHLC’s bi-monthly meeting. ([Exhibit BBB](#)) According to the minutes “Mr. Koonce raised concern about the African American graveyard in Kearneysville that is adjacent to both Rockwool and pipeline construction. Mr. Burke confirmed there is nothing the JCHLC can do”.

The Complainants assert that the JCHLC should have initiated a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9 on or after this June 18, 2019 meeting. It appears that the JCHLC has been unclear in their role concerning the Cemetery and if they should have been engaged in Section 106 clearance procedures. In the face of this uncertainty, JCHLC should have contacted the Advisory Council of Historic Preservation to initiate a compliance review. They failed to do so, thereby causing an adverse impact on the Cemetery, which may have been re-evaluated under a reopened Section 106 procedure, had the Council found the non-compliance that occurred in their Review.

The 180 day limitations period ends December 18, 2019. This complaint was sent by overnight delivery to Director, Office of Civil Rights, Department of the Interior, 1849 C Street, NW, Washington, DC, 20240 on September 23, 2019.

## **2. Jefferson County Office of Engineering**

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer’s Registration No. WVR311281 under WV

General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights, Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to [Title\\_VI\\_Complaints@epa.gov](mailto:Title_VI_Complaints@epa.gov) on September 23, 2019.

### **3. Jefferson County Clerk**

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving Federal financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, occurred on March 29, 2019. The 180 day limitations period ends September 24, 2019. This complaint was sent by overnight delivery to U.S. EPA External Civil Rights Compliance Office (2310A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 and emailed to [Title\\_VI\\_Complaints@epa.gov](mailto:Title_VI_Complaints@epa.gov) on September 23, 2019.

## **C. Discriminatory Acts**

### **1. The Jefferson County Historic Landmarks Commission**

The Jefferson County Historic Landmarks Commission (JCHLC) is an agency of the Jefferson County Commission and operates under the authority granted to landmarks commissions by the West Virginia Legislature, WV Code § 8-26A-7. The Landmarks Commission focuses on heritage education and tourism, historic preservation, and historic resource development. JCHLC's mission is to preserve historic sites, structures, and rural landscapes in the unincorporated areas of Jefferson County and educates the public about the county's heritage. Under federal regulations regarding Section 106, 36 CFR § 800.2(3)(c), JCHLC is considered a "Consulting Party - Local Government Representative" and allowed to serve as a substitute for public involvement in the Section 106 process.



**a. The Jefferson County Historic Landmark Commission failed to respond to a WVSHPO solicitation for Section 106 Public Comment regarding the Rockwool project, thereby denying the public the opportunity to participate in the Section 106 procedure.**

Regardless that the City of Ranson should have been contacted to provide public comment for the area within their jurisdiction, there was no reply or public comment from the agency that was solicited for comment, JCHLC. This violates 36 CFR § 800.2(d)(2)(2) which requires that the public be informed about an undertaking and its effects on historic properties. “The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.”

In WVSHPO’s April 3, 2017 reply letter ([Exhibit Y](#)) to ERM, Inc. which initiates the Section 106 Process, special mention is made that Federal regulations require public comment. WVSHPO also requires that ERM, Inc. specifically contact the Jefferson County Historic Landmark Commission (JCHLC) and request comment on the project. In this letter, the Cemetery (WVSHPO ID# 46JF507) is specifically mentioned as a potential historic place that requires evaluation for inclusion on NRHP.

A July 24, 2017 reply letter ([Exhibit DD](#)) to WVSHPO from Paige Gardner of The Thrasher Group, Inc. (A sub-consultant hired to perform the Phase 1 Archaeological Survey), supplies a copy of the letter sent on June 5, 2017 ([Exhibit EE](#)) to JCHLC requesting public comment. There are three NRHP properties that are listed on this letter, but the Cemetery is NOT listed nor is its ID number given. It is impossible to know if the Cemetery was purposely excluded from this letter, however, its exclusion certainly would have made evaluation of the Cemetery by the JCHLC unlikely.

Ms. Gardner reports that she received no comments or communications in response from JCHLC within 30 days. It appears that no other attempts were made to contact the JCHLC regarding this project. In the digital era we live in, it must be asked why contact via e-mail or telephone was not attempted. Both an email address ([landmarkscommission@jeffersoncountywv.org](mailto:landmarkscommission@jeffersoncountywv.org)) and a telephone number (304-728-3195) are



listed on the JCHLC website. Why didn't Ms. Gardner try to make contact through another method?

Regardless of the reason, the result was that no public comments were received from JCHLC. It appears that WVSHPO accepts this singular contact attempt as satisfying the requirement for public comment as they made no response to the July 24th letter. It appears that no other attempts were made to alert the public at large to the Section 106 review underway. Had any attempt been made to alert the public through usual means, i.e. Legal Notice in the local paper of record (The Spirit of Jefferson), it is likely that members of the community and descendants would have responded.

Furthermore, there is no proof provided that the June 5th letter was in fact received by JCHLC. There is no delivery confirmation receipt or evidence of a postmarked envelope included with the July 24th letter. A review of JCHLC's meeting minutes from the past several years reveals that projects under Section 106 review are discussed and evaluated during the JCHLC's bimonthly meetings. There is no mention in the July 12, 2017 meeting minutes of the June 5th letter or the Section 106 process for Project FR# 17-437-JF, AKA "Project Shuttle" ([Exhibit FF](#)). The first time the Rockwool/Roxul project is discussed by JCHLC occurs on December, 18 2017 in which JCHLC member Ben Horter reports that "They are already moving dirt. Their 106 was approved". ([Exhibit GG](#)) To be clear, the Section 106 process was not closed until 7 months later in late June 2018.

The Cemetery was disparately impacted by the lack of public comment in that the local community, and even those historically-minded individuals on the JCHLC, were unaware of the imminent threat of development until construction had already begun. Had the public been alerted in advance, descendants and concerned citizens would have had the opportunity to voice opposition to the project and possibly been able to uncover the historic importance of the land parcel and Cemetery in particular.

**b. JCHLC incorrectly assumed that the Rockwool project was not in their purview, when in fact three nearby NRHP listed properties and the Cemetery are located in the Middleway District of Jefferson County. JCHLC was directly asked to comment on the three listed NRHP properties, and should have been asked for a comment on the Cemetery, which still required a determination of eligibility for inclusion on NRHP.**

There appears to be confusion over what government entity has authority to make public comments for this project. The entirety of the Rockwool project is contained in the Jurisdiction of Ranson, not the Middleway District of Jefferson County as was put forth by ERM, Inc. when the Section 106 process was initiated and continued to be incorrectly located in Middleway in subsequent communications and reports. The request for Section 106 public comments should have been sent to Ranson City Council in addition to the JCHLC, which had jurisdiction over three nearby NRHP properties and the Cemetery.

In the JCHLC October 10, 2018 meeting minutes ([Exhibit CC](#)), “[REDACTED] suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes.” “Mr. Burke responded to [REDACTED] and indicated the property [Rockwool] is within a municipal boundary [Ranson, WV] and, thus, not under the jurisdiction of the HLC.” The suggestion is made that “Once Rockwool chose Ranson instead of the county property, the county commission took no further part [in the process].”

It is fair to assume that Ranson is responsible for monitoring historic places within its jurisdiction. Under the Section 106 regulations, 36 CFR § 800.2(c)(3) - Participants in the Section 106 process: “Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.” However, Ranson does not have a committee or council dedicated to historic landmarks in its jurisdiction. In this case, the Section 106 request for public comment for the Rockwool project, should have been addressed to the City Council of Ranson. Rockwool had been working intimately with the City of Ranson and knew well that their property was located in Ranson, why was this error not addressed by Rockwool or its contractors?

Since JCHLC denies responsibility for evaluating this particular property, and the municipality in which the property is located does not have an established entity to provide comments on historic places, and no effort was made by WVSHPO or ERM, Inc. to contact Ranson, then it is logical to conclude that the Section 106 requirement for public comment was not met.

**c. The December 2017 Meeting should have triggered the JCHLC to initiate a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9.**

Regardless of the jurisdiction confusion regarding the Rockwool property, which is indeed located in Ranson WV, the Cemetery is located in the Middleway District of Jefferson County, and falls within the purview of the JCHLC. The JCHLC neglected their responsibility to evaluate the Cemetery when they incorrectly assumed that none of the aspects of this project were within their authority to evaluate. In fact, the first mention of this project is at the December 13, 2017 ([Exhibit GG](#)) meeting. At this meeting, JCHLC member Ben Horter reports “Roxul is building a rock wool insulation factory in the Bardane area. Horter attended a breakfast meeting at Hollywood Casino. They are already moving dirt. Their 106 was approved. This is part of the National Preservation Act - any federal undertaking must comply and take into account potential damage to historic resources.” It is unclear why the JCHLC does not take the initiative here to understand how the Section 106 could have been approved without their input, and failed to initiate a “Council review of Section 106 Compliance” with the Advisory Council of Historic Preservation per the process described in 36 CFR § 800.9, to ensure compliance with Section 106 regulations.

The next mention of Rockwool is on August 8, 2018 ([Exhibit CCC](#)). At this meeting, the Committee discusses the Rockwool project’s potential impact on nearby historic properties and votes to send a letter in opposition of the construction. At the following meeting on October 10, 2018 ([Exhibit DDD](#)) five local citizens spoke against the project and the Committee voted to send an opposition resolution to a number of local government bodies. How can WVSHPO accept that the public comment requirement has been satisfied if the singular entity allegedly

contacted for public comment appeared to have no knowledge of the project until a full year later?

This position is inconsistent with the way in which other Section 106 proceedings were handled according to JCHLC meeting minutes. There are numerous examples of JCHLC providing feedback and comments on projects located within city limits. JCHLC even has a “Courthouse Committee”, a committee dedicated to matters relating to the Charles Town Courthouse, which is in the jurisdiction of Charles Town, WV. ([Exhibit EEE](#)) How could JCHLC claim they do not have the authority to proceed? Why did JCHLC absolve themselves of responsibility for this project? Clearly, there is a need to clarify Section 106 protocol at JCHLC to prevent projects and properties from slipping through the cracks again.

This proceeding reveals a large hole in the Section 106 process as it operates in Jefferson County. The recent annexation of parts of Jefferson County by Ranson has created a patchwork of jurisdictions that seems to be unclear even to local officials. The unclear nature of who would have been responsible for providing Section 106 public comments for the entirety of the Rockwool project, which was wholly contained in Ranson but surrounded by County land that hosts three NRHP listed properties and the Cemetery, should be resolved and clarified with all potential participants in the Section 106 process. This confusion, brought on by the incorrect location of the Rockwool facility in the Middleway District and the cross-jurisdictional nature of the Section 106, is no excuse for the fact that the public was not given an opportunity to participate in this Section 106 process.

Complainants argue that the first harms due to inaction caused by JCHLC in 2017 through today’s date have caused an adverse domino effect and “fruit from the poisonous tree” that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits even though the Section 106 procedure had not been completed, which led to irreparable harm to the Cemetery, its burials, its descendants, the archaeological significance, and African American culture and heritage.

## **2. Jefferson County Office of Engineering**

The Jefferson County Office of Engineering is a department of the Jefferson County Commission.

The duties of the Jefferson County Office of Engineering are:

“The Office of Engineering is responsible for the engineering review of both residential and commercial subdivision plats and commercial/industrial site plans for compliance with the Subdivision Ordinance, Floodplain Ordinance, and the Improvement Location Permit Ordinance. This is done in conjunction with the Office of Planning & Zoning’s review with the Subdivision and Zoning Regulations.”<sup>35</sup>

The Complainants find several erroneous facts to Mountaineer Gas’ recorded easement recorded on April 19, 2019. As described in subsection “[i. Property ownership discrepancies](#)” of section “IV. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION ”incorrect maps were submitted by Mountaineer Gas. One version was submitted to WVDEP and another version was recorded in the Jefferson County Clerk’s Office .

Both map versions are incorrect and if either of these maps and the gas pipeline project was reviewed properly by the Jefferson County Office of Engineering, surely these inconsistencies would have been identified. The majority of the gas pipeline falls within County’s jurisdiction (Middleway District) and a small portion in Ranson jurisdiction. If it is not the Jefferson County Office of Engineering’s responsibility to review and oversee projects that disturb land within their jurisdiction, then whose responsibility is it? We are unsure if their actions or inactions were a failure of Ranson to communicate with their office or dereliction of their duties. Many disparate impact situations occur because government agencies either fail to follow their own policies and procedures or there are not proper policies and procedures in place to follow. Whatever the failure was between Ranson and the Jefferson County Office of Engineering, property that belonged to the A.M.E. Church was usurped and destroyed along with possible graves and any archaeological findings thereby destroying African American heritage, history, and culture.

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<sup>35</sup> <http://www.jeffersoncountywv.org/county-government/departments/engineering-department>



### 3. Jefferson County Clerk

The Jefferson County Clerk's office maintains birth, marriage and death records, records documents, and keeps the minutes of the Jefferson County Commissioners.

The Jefferson County Clerk's Mission Statement: "To protect, preserve and maintain the public records, as well as the election process, with integrity and accountability; to support the Constitution of the United States and the Constitution of West Virginia while providing the utmost accurate and professional service to our customers and colleagues."<sup>36</sup>

From Jefferson County Clerk's document requirements to record deeds:

Deeds (this includes all deed types)

- Completed Sales Listing Form (a printable version of this form is above for your convenience)
- Grantor's signature
- Legal description of the property including district
- An "And Being" paragraph (This is information on the previous owner which includes: name, date, deed book number and page number. This information is necessary in order to follow chain of title.)
- Declaration of Consideration of Value (This is the monetary amount for which the property is sold. If the property is being transferred without monetary value, it must state in the declaration paragraph 'why' it is exempt from transfer tax.)

The Complainants find several erroneous facts in Mountaineer Gas' easement agreement recorded in the Jefferson County Clerk's office on April 19, 2019. As described in subsection "[i. Property ownership discrepancies](#)" of section "IV. RECIPIENT: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION "incorrect maps were submitted by Mountaineer Gas. One version was submitted to WVDEP and another version was recorded in the Jefferson County Clerk's Office. Both map versions are incorrect and if the Jefferson County Clerk's office reviewed the easement agreement for accuracy of deed title chain and legal descriptions, surely these inconsistencies would have been identified.

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<sup>36</sup> <http://www.jeffersoncountywv.org/county-government/elected-officials/county-clerk>

The Jefferson County Clerk's mission statement includes "To protect, preserve and maintain the public records", surely that would include a procedure to verify said records are accurate. The Complainants argue that if procedures were either followed or in place to verify the recorded easement for accurate property ownership, then the discovery of the A.M.E. Church's legal ownership to the property would have been revealed. As stated in the Jefferson County Office of Engineering's section above, failure for government agencies to follow their own policies and procedures or if there are not proper policies and procedures in place to follow, result in disparate impact cases. The Jefferson County Clerk's failure to follow procedures or have established procedures has resulted in the possible disturbance or removal of burials at the A.M.E. Church as well as destroying the archaeological integrity of the area. Destruction to African American culture, history, and heritage has occurred.

#### **D. Request**

Based upon the foregoing, Complainants request that the DOI accept this complaint and conduct an investigation to determine whether JCHLC violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, 36 CFR Part 800 and 40 C.F.R. Part 7. If a violation is found and JCHLC is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the DOI to initiate proceedings to deny, annul, suspend, or terminate DOI financial assistance to JCHLC.

The Complainants request that a "Council review of Section 106 Compliance" be initiated per the process described in 36 CFR § 800.9, to evaluate three issues 1) Was the Section 106 process satisfactorily completed and compliant 2) Was JCHLC's role or lack thereof was appropriate 3) Was the public comment requirement satisfied if JCHLC made no comment and no other entities or the public were alerted.

#### **2. Jefferson County Office of Engineering**

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights accept this complaint and conduct an investigation to determine



whether the Jefferson County Office of Engineering, a department of Jefferson County Commission, violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for failure to review Mountaineer Gas' pipeline construction route (approved by WVDEP on March 29, 2019, Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities), to ensure accuracy of land records. If a violation is found and the Jefferson County Office of Engineering is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies, and after the conclusion of those proceedings, deny, annul, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies.

### **3. Jefferson County Clerk**

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights accept this complaint and conduct an investigation to determine whether the Jefferson County Clerk, a department of Jefferson County Commission, violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 for failure to review Mountaineer Gas' pipeline construction route (approved by WVDEP on March 29, 2019, Mountaineer's Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities), to ensure accuracy of land records. If a violation is found and the Jefferson County Clerk is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further petition the EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies, and after the conclusion of those proceedings, deny, annul, or terminate EPA financial assistance to Jefferson County Commission and their departments and agencies.

## X. CONCLUSION

The Respondents' failure to follow policies and procedures or have established policies and procedures to protect against discrimination and disparate impact, have allowed the Rockwool and Mountaineer Gas construction activities to cause irreparable harm to the Cemetery; its descendants; African American culture, heritage, and history by destroying archaeological settings and significance of these burial grounds.

It is unclear to the Complainants whether the harms described herein are either a case of government collusion or complete State and local government breakdown. Whether the situations described are the results of collusion, dereliction of duties, or not having established policies and procedures to protect against discrimination and disparate impact events, proper archaeological assessments were not performed for the Cemetery and the A.M.E Church and the Section 106 of the National Historic Preservation Act (NHPA) was not completed.

Complainants argue that the Respondents' actions and inactions have caused disparate impacts. The first harms of WVSHPO and JCHLC in 2017 to present to not adequately review the Cemetery for historical context and protection caused an adverse domino effect and a "fruit from the poisonous tree" scenario that allowed other government agencies, such as WVDEP and WVDOT, to proceed with approving permits. This led to irreparable harm to the Cemetery and its burials, archaeological significance, and African American culture and heritage. As outlined in "Section VII: Proving Discrimination – Disparate Impact" of the *Title VI Legal Manual*:<sup>37</sup>

"Finally, the importance of identifying a specific practice does not necessarily mean that practice must be affirmatively undertaken; sometimes the relevant policy or practice could be the failure to do something, or even the failure to have a policy. In other words, inaction can exert a disproportionate adverse effect."

The Respondents, being Federally funded entities, must make every effort to abide by all laws of the Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and must have the awareness, skills, and training to respect and protect all aspects of a culture's heritage, history, and traditions.

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<sup>37</sup> <https://www.justice.gov/crt/fcs/T6Manual7>

As described in the African American Burial Grounds Network Act, African American burial grounds and other cultural areas should receive special protections due to the many atrocities that have been committed to their ancestors. We can not let any parts of African American history, culture, and heritage be erased for any reason; especially not to be sacrificed for perceived state/local economic development and individual and/or corporate benefits.

## **XI. REQUEST**

For the reasons stated herein, Complainants respectfully request that

a. The United States National Park Service, Department Of The Interior find the West Virginia State Historic Preservation Office and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

b. The United States Environmental Protection Agency find the West Virginia Department of Environmental Protection and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

c. The United States Department of Transportation and the Federal Highway Administration the West Virginia Department of Transportation and its sub-agencies in violation of Title VI of the Civil Rights Act of 1964; and

Pursuant to the Title VI of the Civil Rights Act, the Complainants seek an immediate injunction and stop work order to be issued by the State of West Virginia and the Respondents to all Rockwool and Mountaineer Gas construction and operating activities to prevent further damage to the Cemetery, its descendants, and African American history and culture until the discriminatory grievances contained herein can be resolved.

**XI. COMPLAINANTS' SIGNATURES**

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Signature: \_\_\_\_\_

Date: 9/21/19

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Boyd Carter Memorial Cemetery Descendant

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Winchester, VA 22601

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Signature: \_\_\_\_\_

Date: 9/21/19

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Boyd Carter Memorial Cemetery Descendant

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Charles Town, WV 25414

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Signature: \_\_\_\_\_

Date: 9/23/19

Jennifer King, Chair

Rural Agricultural Defenders

PO Box 445

Kearneysville, WV 25430

304-283-0032

Signature: \_\_\_\_\_

Date: 9/23/2019

Giuliana Brogna, Treasurer

Rural Agricultural Defenders

PO Box 445

Kearneysville, WV 25430

401-855-1037

Signature: \_\_\_\_\_

Date: 9/22/19

Susan April, Environmental Specialist

Rural Agricultural Defenders

PO Box 445

Kearneysville, WV 25430

240-675-2385

### **XIII. EXHIBITS - ATTACHED**

EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E  
CHURCH BURIALS, PAGE 1

081623(1)

*Boyd Carter Memorial Cemetery & Possible A.M.E Church Burials*

Confirmed Burials in Boyd Carter Memorial Cemetery

Burials	Birth Date	Death Date	Age at Death	Race	Death Certificate	Grave Location
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy						
1						
2						
3						
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Page 1 of 1

**EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E  
CHURCH BURIALS, PAGE 2**

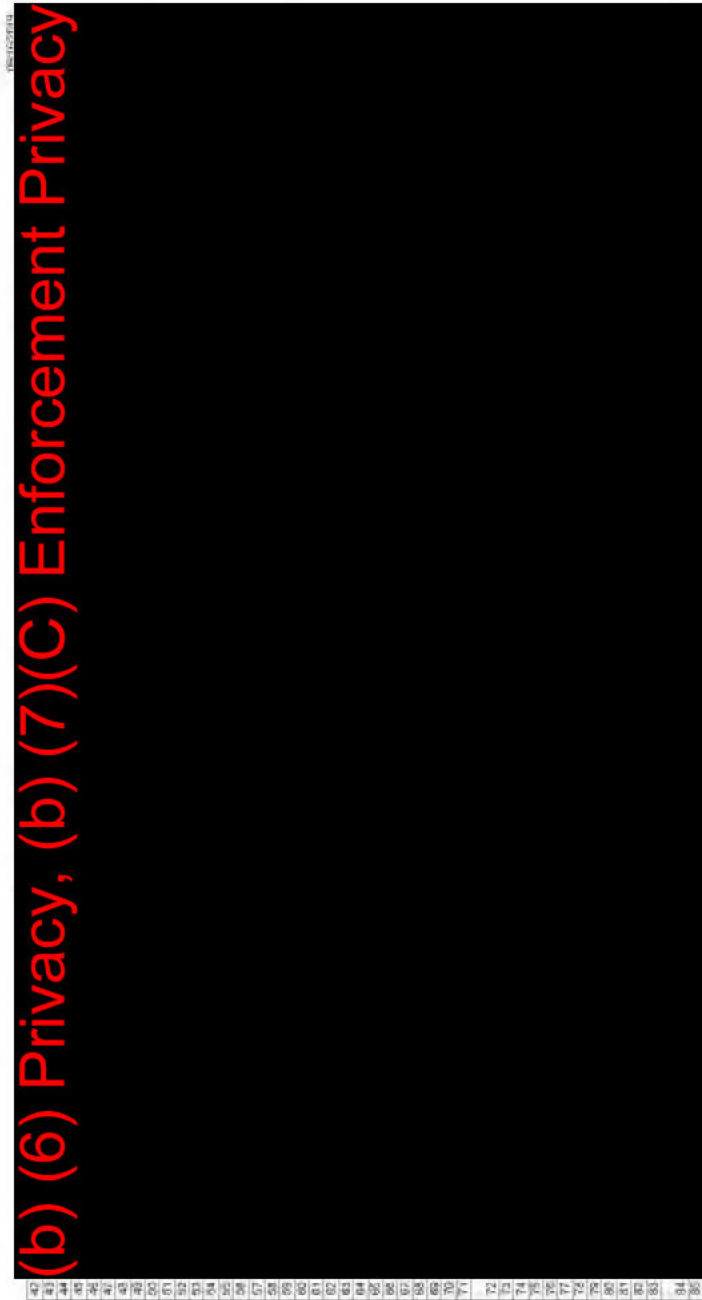




EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E  
CHURCH BURIALS, PAGE 3

08165219

Possible Burials in Boyd Carter Memorial Cemetery & A.M.E Church (Inmates from Death Certificate)					
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Page 3 of 4

**EXHIBIT A - BOYD CARTER MEMORIAL CEMETERY & POSSIBLE A.M.E  
CHURCH BURIALS, PAGE 4**

06/16/2014

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Page 4 of 4

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## EXHIBIT B - THE 1902 CEMETERY DEED

Standard Lime & Stone Co.

To: Deed of Bargain and Sale.

Trustees: "Burying Ground"

This Deed made this 31st day of December 1902 between the Standard Lime and Stone Company, a corporation of W. Va., having an office at Baltimore, Maryland of the first part and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Trustees, all of Jefferson County West Virginia.

Witnesseth:- that for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey with covenants of general warranty unto the said Trustees all of their right, title, interest to, and in the following described tract of land situated about 1 mile South East of Kearneysville, Jefferson County, West Virginia.



Beginning at a stake (fig 1); thence S 60-15E at 12 ft. passing through a stone corner to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy in all 14.9 poles to a stone (b) (6) Privacy, (b) (7)(C) Enforcement Privacy corner (fig 2); thence N 6-0E 5.1 pole to a stake now made a corner (fig 3); thence N 60-15 W 12.45 poles to a stake corner to (fig 3); thence S 34-40W

4.58 poles to the beginning containing one rood twenty two and four tenths perches (22.47).

The said lot of ground conveyed to the aforesaid Trustees to be used as a burying ground for colored people and for no other purpose.

To have and to hold the said lot herein conveyed with all rights privileges and appurtenances thereunto belonging including a right to use a road, for ingree or egress to said burying ground, and used by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy through the lands of the Standard Lime & Stone Company unto the said Trustees or their successors forever.

Witness the following signatures and seals.

The Standard Lime & Stone Co., (Seal)

by Daniel Baker (Seal)

President.

State of Maryland,

Baltimore City SS.

I, hereby certify that on this 10th day of January A. D. 1903, before the subscriber a Notary Public of the State of Maryland personally appeared Daniel Baker President of the Standard Lime & Stone Co. and did acknowledge the foregoing deed to be his act.

Witness my hand and Notarial Seal.

State of West Va.,

County of Jefferson SS.

In the Clerk's Office of County Court, Sept, 14th, 1906.

This Deed of Bargain and Sale, dated Dec. 31st 1902 from Standard Lime & Stone Co. to Test:

EXHIBIT C - (b) (6) Privacy, (b) (7)(C) Enforcement Privacy DEED (DEED BOOK 263 PAGE 273) PAGE 2 OF DEED

274

said Lane S 78° 30' E - 392.0 feet, thence crossing the said (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Lane N 31° 00' E. - 24.15 feet to a corner in the southern line of the Cemetery Lot, thence with the three following lines of the said Lot N. 60° 30' W - 12.0 feet, thence N 34° 40' E - 75.57 feet, thence S 60° 30' E. - 205.43 feet to a corner in the western line of the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Farm, thence with the said line N. 8° 59' 20" E. - 437.77 feet to the beginning.

THIS CONVEYANCE IS MADE SUBJECT TO SUCH rights of burial as may exist (it being understood that there may be certain bodies buried in the portion of the land herein described near to and along the northeast line of the old cemetery and the northwest line of the old cemetery).

A plat of the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy calculation is hereby attached and made a part hereof.  
DECLARATION OF CONSIDERATION OR VALUE

Under penalties of fine and imprisonment as provided by law, the undersigned (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, who resides on (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Charles Town, Jefferson County, West Virginia, being one of the grantors in this deed and a responsible party familiar with the transaction herein involved, by his signature to this deed does hereby declare that the total consideration paid and secured to be paid for the property conveyed by the document of which this declaration is a part is One Thousand Dollars (\$1,000.00) and that 100 per cent of the real estate herein conveyed is situate in the State of West Virginia

WITNESS the following signatures and seals.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy (SEAL)  
Special Commissioner  
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy (SEAL)  
Special Commissioner

Documentary stamp \$1.10 affixed.  
N.Ya Transfer Stamps \$2 20 affixed, 11/7/63.

STATE OF WEST VIRGINIA,  
COUNTY OF JEFFERSON, TO-WIT

I, J. J. Strider, a Notary Public of and for said County and State do hereby certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, whose name is signed to the foregoing deed bearing date the 5th day of Nov., 1963, has this day acknowledged the same before me in my said County.

Given under my hand this 7th day of Nov , 1963

J. J. Strider, Notary Public

My Commission Expires:  
Jan 25 1966

STATE OF WEST VIRGINIA  
COUNTY OF BERKELEY, TO-WIT

I, John W. Small, Jr., a Notary Public of and for said County and State do hereby certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Special Commissioner, whose name is signed to the foregoing deed, bearing date the 5th day of November, 1963, has this day acknowledged the same before me in my said County.

Given under my hand this 5 day of November, 1963.

John W. Small, Jr ,  
Notary Public

My Commission Expires:  
Feb. 25, 1973.



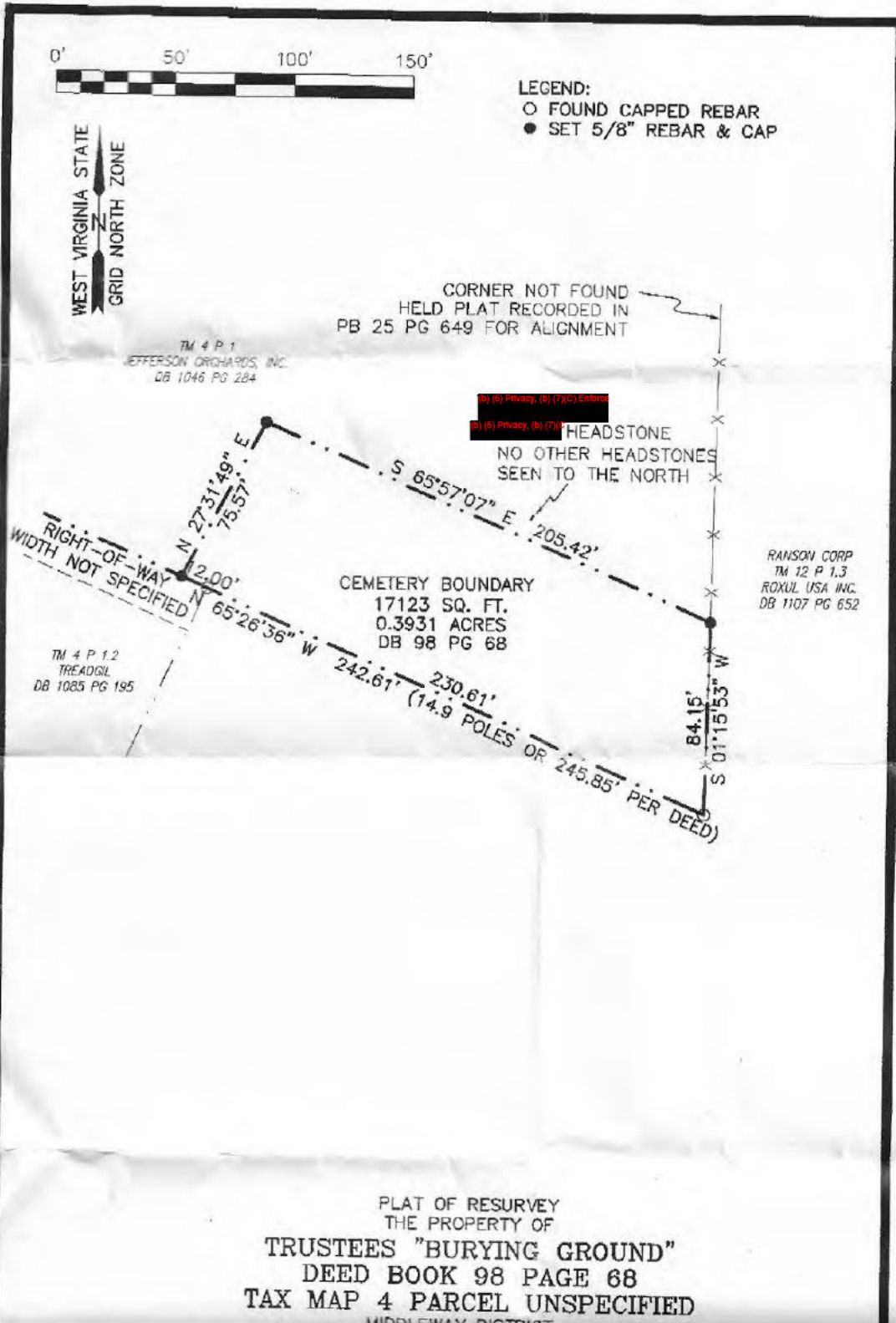
# EXHIBIT D - 05/02/19 CEMETERY SURVEY

05/02/2019 09:15

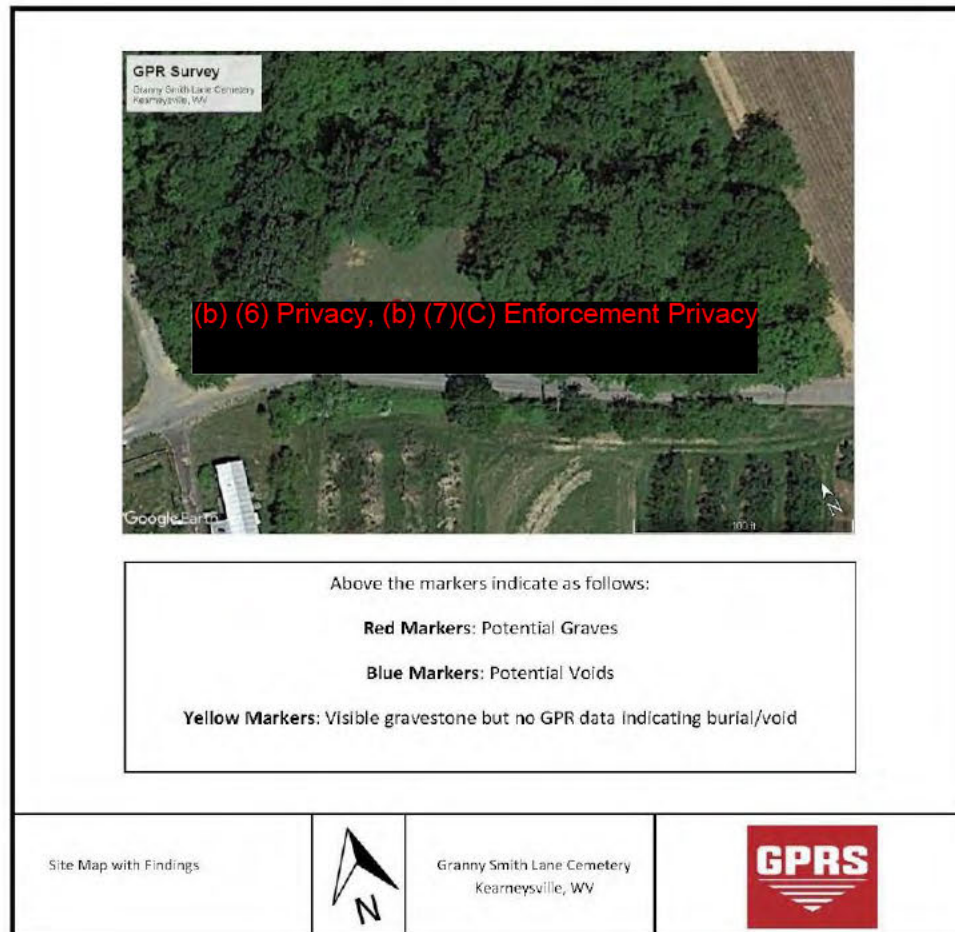
(b) (6) Privacy, (b) (7)(C) Enforce

(b) (6) Privacy, (b) (7)(C) Enforce

PAGE 01/01



## EXHIBIT E - GROUND PENETRATING RADAR RESULTS





**EXHIBIT F - GROUND PENETRATING RADAR RESULTS - GRAVES NEAR ROAD**





## EXHIBIT G - BURIAL PLOTTING

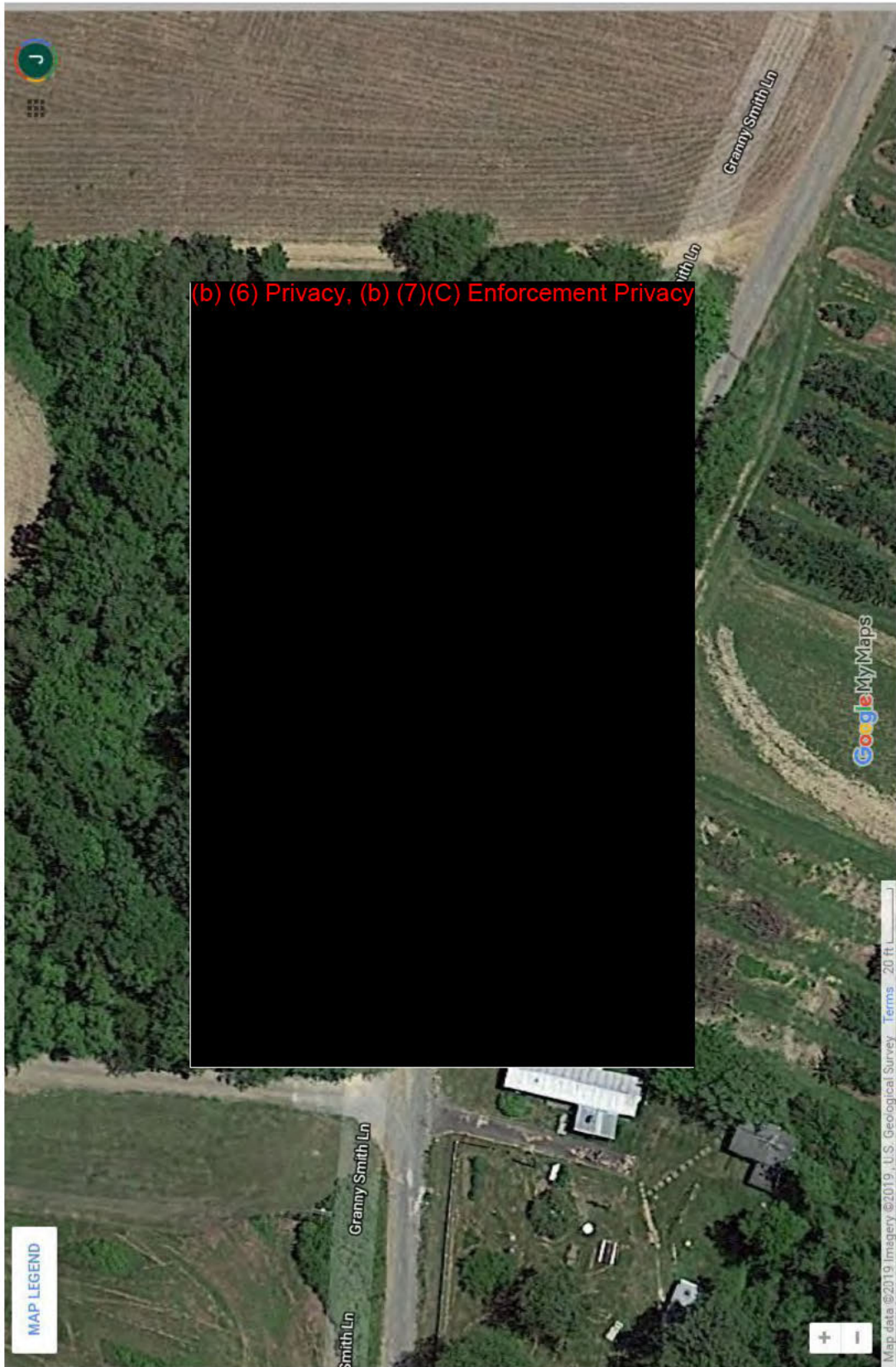


EXHIBIT H - 1966 JEFFERSON ORCHARDS' DEED, DANDRIDGE OWNERSHIP

129.

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(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

To: DEED OF B. & S.  
Jefferson Orchards, Inc.

THIS DEED made and executed this 1st day of December, 1966, by and between (b) (6) Privacy, (b) (7)(C) Enforcement Privacy parties of the first part, and Jefferson Orchards, Inc., a West Virginia corporation, party of the second part:

WITNESSETH, That for and in consideration of the sum of \$5.00, cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties of the first part do hereby grant, bargain, sell and convey and by these presents, have granted, bargained, sold and conveyed, to and unto the party of the second part, with general warranty, the following described real estate, situate in Middleway District of Jefferson County, West Virginia, more particularly described as follows:

"All those certain tracts or parcels of land situate in Middleway District, Jefferson County, West Virginia, together with all improvements thereon and appurtenances belonging thereto, described as follows:

FIRST PARCEL

Those three several tracts of land, which were heretofore conveyed to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Trustees, by deed dated February 18, 1876, and recorded in the Office of the Clerk of the County Court of Jefferson County, West Virginia, in Deed Book D, page 104, containing in the aggregate about 208 acres, 2 roods and 30 perches, and described as follows:

TRACT NO. 1:

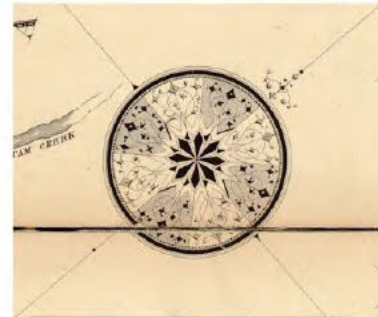
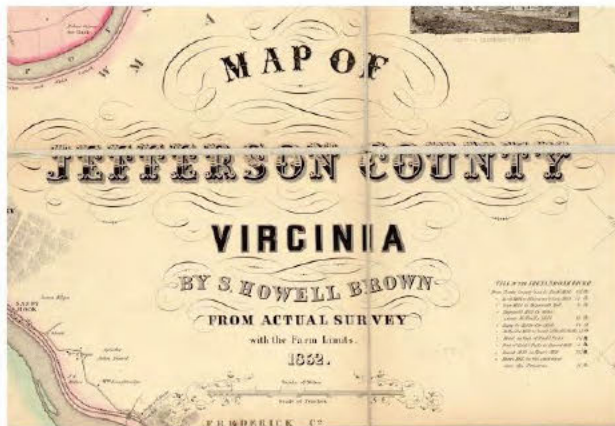
Beginning at a stone in the edge of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy field about 1 pole from the fence in the line of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Patent, now (b) (6) Privacy, (b) (7)(C) Enforcement Privacy thence with the line of said Patent, now (b) (6) Privacy, (b) (7)(C) Enforcement Privacy S. 64° 40' E. 216.7 poles to a stone set in the ground in the line of said Patent, now (b) (6) Privacy, (b) (7)(C) Enforcement Privacy corner to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy about 2 poles to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy field; thence with the line of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy S. 4° 3/4' E. 142 poles to a stone set in the ground in the line of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy now made corner to the heirs of A. S. Dandridge; thence, leaving Mrs. (b) (6) Privacy and running the division line, N. 64° 3/4' W. 165.7 poles to a stone standing nearly in the center between sundry marked white oaks; thence S. 25° 1/4' W. 133.5 poles to the beginning; containing 160 acres.

TRACT NO. 2:

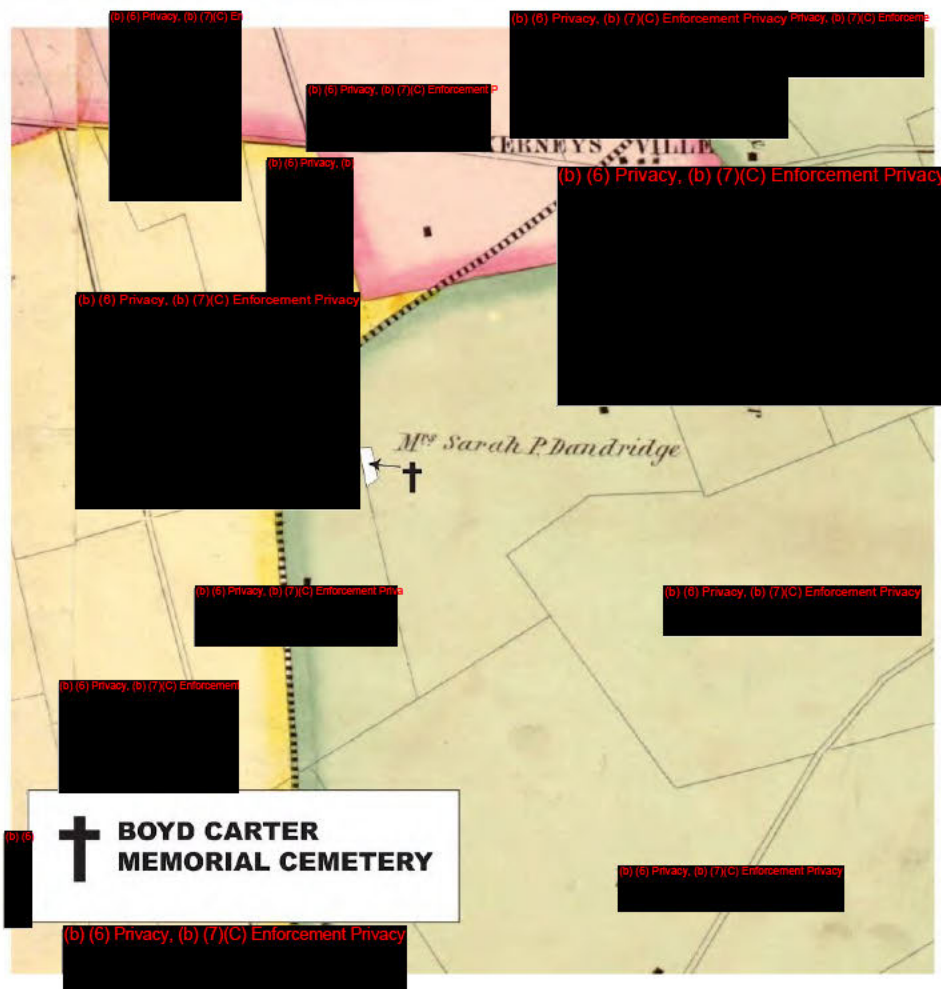
Beginning at a stone in the line of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy deceased, and corner to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

EXHIBIT I - 1852 S. HOWELL BROWN MAP OF JEFFERSON COUNTY, WV  
CLOSEUP SHOWING DANDRIDGE LAND OWNERSHIP & CEMETERY

# Jefferson County, WV 1852 Map Closeups

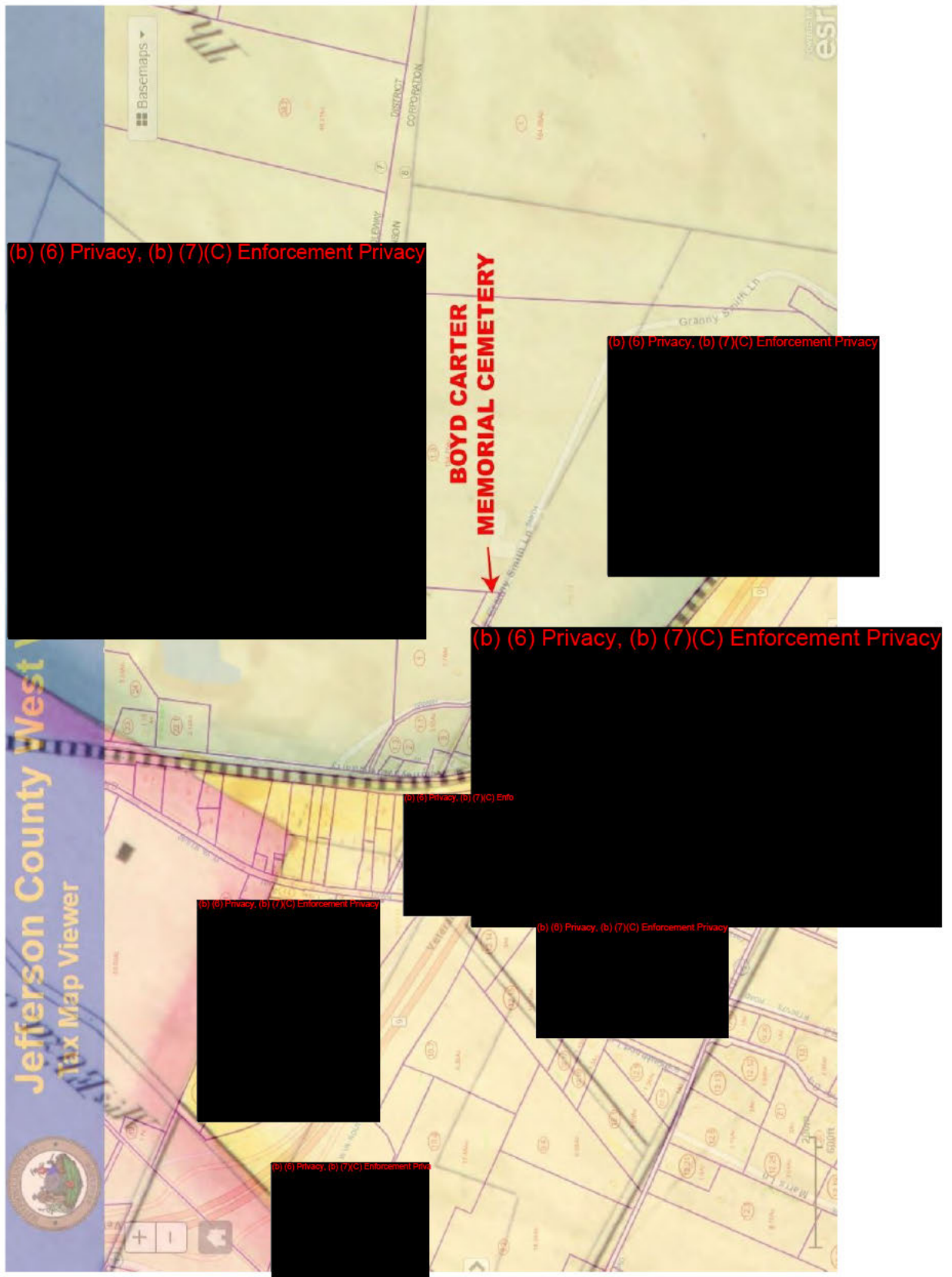


COMPASS

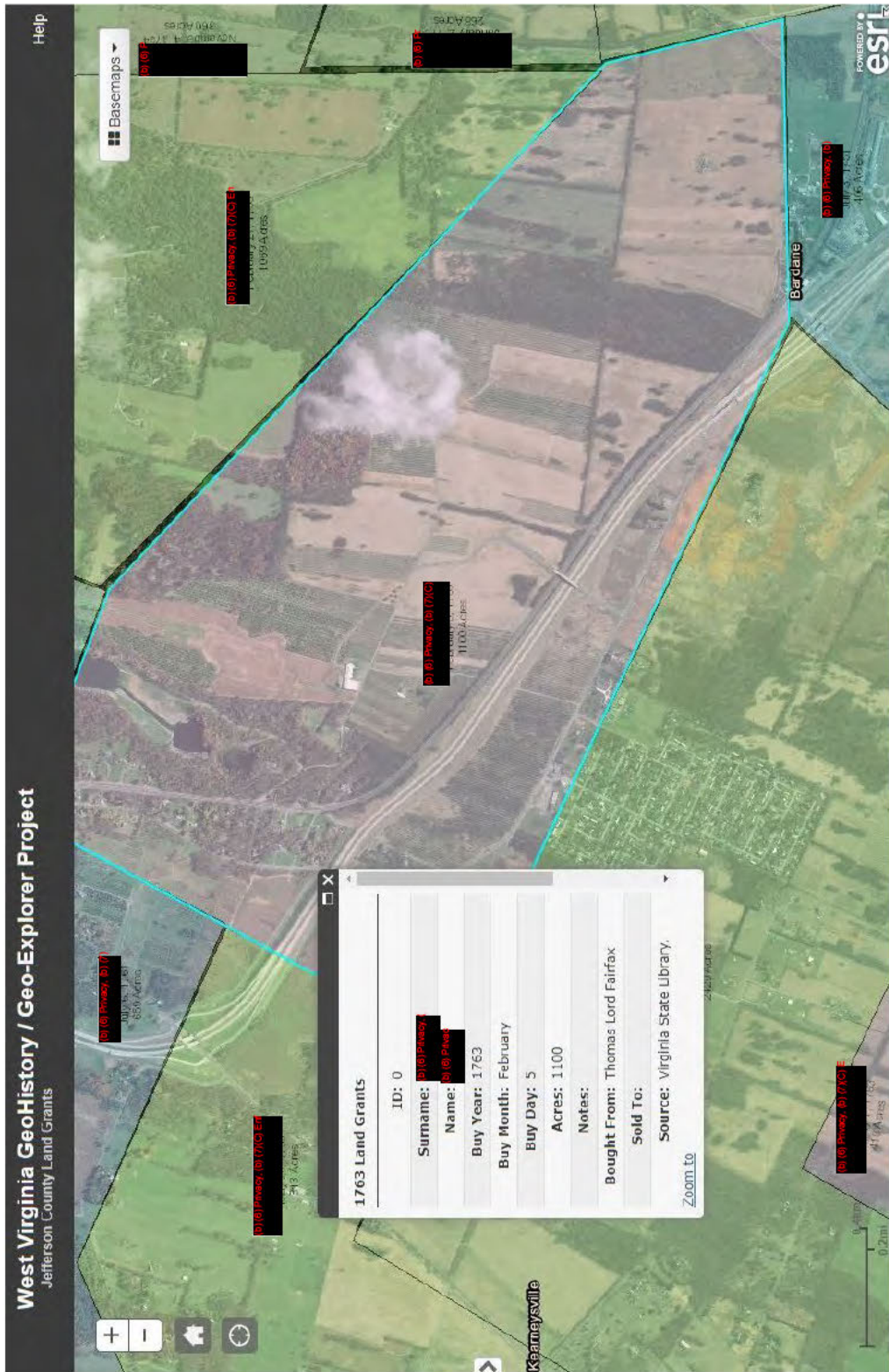




## EXHIBIT J - JEFFERSON COUNTY WV TAX MAP OVERLAY WITH 1852 MAP

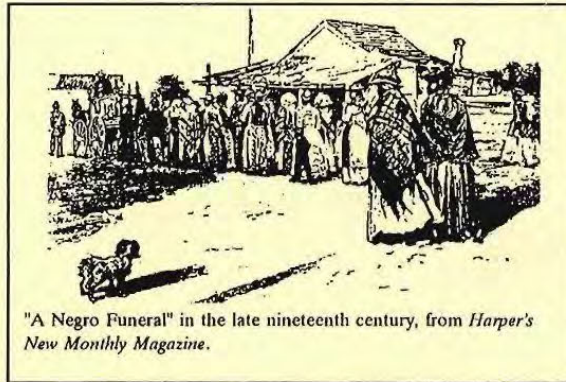


**EXHIBIT K - WEST VIRGINIA GEOHISTORY / GEO-EXPLORER PROJECT:  
JEFFERSON COUNTY LAND GRANTS SHOWING [REDACTED] OWNERSHIP OF  
CEMETERY IN 1763**





**EXHIBIT L - "GRAVE MATTERS: THE PRESERVATION OF AFRICAN AMERICAN CEMETERIES" BY THE CHICORA FOUNDATION, PAGE 4**



"A Negro Funeral" in the late nineteenth century, from *Harper's New Monthly Magazine*.

place at night, possibly to allow slaves from neighboring plantations to attend, but just as likely because no other time was available. This may help explain why so many African-American burials continued to be held on Sundays even into the early twentieth century. All of the accounts suggest that the burials were rather significant affairs, with

prayers, singing, and sometimes even an air of a pageant. Sometimes the service was reported to continue until the morning. Many accounts from the mid- and late-nineteenth century reveal that African-Americans were uniformly buried east-west, with the head to the west. One freed slave explained that the dead should not have to turn around when Gabriel blows his trumpet in the eastern sunrise. Others have suggested they were buried facing Africa.

Even where the slaves were buried seems similar. All seem to represent marginal property — land which the planter wasn't likely to use for other purposes. The burial spots have been described as "ragged patches of live-oak and palmetto and brier tangle which throughout the Islands are a sign of graves within, — graves scattered without symmetry, and often without headstones or head-boards, or sticks . . ." A more recent researcher, Elsie Clews Parsons, observes that the African-American cemeteries were:

hidden away in remote spots among trees and underbrush. In the middle of some fields are islands of large trees the owners preferred not to make arable, because of the exhaustive work of clearing it. Old graves are now in among these trees and surrounding underbrush.

Frances Anne Kemble reported that while an enclosure was erected around the graves of several white laborers buried on Butler Island, the graves of the African-American slaves were trampled on by the plantation cattle.

A black cemetery in the South Carolina up country was described by John William DeForest shortly after the Civil War. He commented that while a few marble and brick headstones were present, most were "wooden slabs, all grimed and mouldering with the dampness of the forest. . . ." At the time, some of the wooden slabs had painted names and dates. The paint likely flaked off only shortly before the wood itself rotted away.

# EXHIBIT M - "AFRICAN AMERICAN CEMETERIES AND THE RESTORATION MOVEMENT" UNIVERSITY OF GEORGIA, SLAVE BURIAL GROUND CHARACTERISTICS

9/20/2019

African American Cemeteries and the Restoration Movement - Brooklyn Cemetery Project - Death and Human History in Athens

## DEATH AND HUMAN HISTORY IN ATHENS

Baldwin Hall Excavation

Brooklyn Cemetery

Oconee Hill Cemetery

View all items

Contributors

### AFRICAN AMERICAN CEMETERIES AND THE RESTORATION MOVEMENT

#### African American Burial Traditions

Africa is a heterogeneous continent with various religions, racial identities, and cultural practices. When slaves arrived in America, they came from different tribes. Once in America, slaves were deliberately separated from family members. Then implicitly and explicitly discouraged by their owners from expressing their cultural beliefs. One form of resistance to cultural assimilation was creating their own burial customs.

On plantations, funeral ceremonies usually occurred at night. Since slaves had to work all day, night was the only time for them to participate in the ceremony. But it also allowed neighboring slaves to commune across legalistic borders. This tradition continued into the 20th century. Pre-Civil War, slave owners, not wanting to use their arable land for slave burials, would bury slaves in hidden in remote spots among trees and underbrush. During the ceremony, attendees would perform prayers and sing hymns. Some cemeteries have their headstones facing west for spiritual reasons. Some graves are marked with trees, plants (ex: Yucca) or wooden planks. Believing that since trees would continue after their burial, death would not be their end. By using temporary markers, the residents ensured that there would always be room in the cemetery for future generations. Once buried, slaves from coastal regions would surround the gravesite with shells to enclose the soul's immortal presence. In other areas, offerings could be the last physical object the deceased touched.

Consequently, these traditions, along with the South's segregated past, has lead to the negative perception of Black cemeteries as being abandoned and unkempt.



Figure 1. Although there is no way to know for certain, based on our knowledge of the tradition of leaving everyday items at a gravesite, it is possible that this bottle was left purposely by the family of the deceased.



Figure 2. In Brooklyn Cemetery there are several family plots (see figure 2). At the same time, several families are sprawled across several sections. Family members may not be buried together because Black cemeteries did not typically preserve family groupings.

#### Preserving Black Cemeteries

In our capitalistic society, we have the tendency to focus on the most profitable options instead of the most humanistic. Landowners may ignore the existence of the cemetery or underestimate the size of the plot to support their building developments. Similarly, the University of Georgia had a recent issue, finding unidentified corpses in their construction zone.

However, most Black cemeteries were not delineated by deeds or legal instruments. Since cemeteries do not provide tax revenue for the county, disincantizing the county from keeping up with the owners of the plots. Ultimately leaving the cemeteries forgotten by the local government. Once reintroduced to the cemeteries, counties have the legal right to choose whether or not to maintain 'abandoned' cemeteries. With that in mind, counties should be sure to include local Black communities in the decision making.

Some Black cemeteries do not have records of names, death certificate numbers or lists of relatives. Let alone a map of where people are buried. At Brooklyn Cemetery we are fortunate enough to have a record of names, death certificate numbers,

#### BROOKLYN CEMETERY PROJECT

A Short History of Black Athens

Brooklyn Cemetery: A Brief History and a Tour

African American Cemeteries and the Restoration Movement

Brooklyn Cemetery Map

Brooklyn Cemetery: A Photo Gallery

Who is Buried in Brooklyn?

Data Analyses and Graphs

Timeline

https://digilab.libs.uga.edu/cemetery/exhibits/show/brooklyn/african-american-cemeteries-an?fbclid=IwAR3euklEHFI0w6q2F7488J0UbAhvXKTA328V...

1/4



**EXHIBIT N - "GRAVE MATTERS: THE PRESERVATION OF AFRICAN AMERICAN CEMETERIES" BY THE CHICORA FOUNDATION, PAGE 5**



Example of a stone marker for Albert Doctor, born a slave, in Georgetown County, South Carolina.

Graves were marked in a variety of ways besides wood or stone slabs. Sometimes unusual carved wooden staffs, thought perhaps to represent religious motifs or effigies, were used. Some graves were marked using plants, such as cedars or yuccas, and anthropologists have suggested this tradition may reflect an African belief in the living spirit. This tradition can be traced at least to Haiti, where blacks, probably mixing Christian religion with African beliefs, explain that, "trees live after, death is not the end." Yuccas and other "prickly" plants may also have been used "to keep the spirits" in the cemetery. Other graves were marked with

pieces of iron pipe, railroad iron, or any other convenient object.

At times shells were used to mark the grave. One anthropologist in the early 1890s remarked that "nearly every grave has bordering or thrown upon it a few bleached sea-shells of a dozen different kinds." This practice has been traced back to at least the BaKongo belief that the sea shell encloses the soul's immortal presence. There was a prayer to the mbamba sea shell:

As strong as your house you shall keep my life for me. When  
you leave for the sea, take me along, that I may live forever  
with you.

Even into the twentieth century some Gullah explained the use of shells on graves



African-American graves on Springfield Plantation, now part of Brookgreen Gardens, in January 1931. Courtesy of Brookgreen Gardens Archives, Murrells Inlet, South Carolina.



**EXHIBIT O - THE CEMETERY YUCCAS**



(b) (6) Privacy, (b) (7)(C) Enforcement Privacy



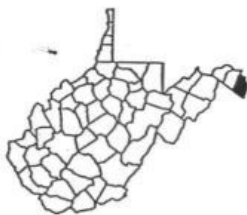


## EXHIBIT Q - AFRICAN METHODIST EPISCOPAL CHURCH DISTANCE TO CEMETERY



# EXHIBIT R - AFRICAN METHODIST EPISCOPAL CHURCH OF KEARNEYSVILLE SHPO SURVEY, PAGE 1

MBJ RESOURCE #: 042



## WEST VIRGINIA HISTORIC PROPERTY INVENTORY FORM

<b>STREET ADDRESS</b> East side of CSX Railroad		<b>COMMON/HISTORIC NAME</b> <input checked="" type="checkbox"/> Common <input checked="" type="checkbox"/> Historic <input type="checkbox"/> Both Methodist Episcopal Church		<b>NO. IN SURVEY</b> JF-0078- 6058		<b>NO. OF BAYS</b> FRONT: <input type="text" value="1"/> SIDE: <input type="text" value="3"/>	
<b>TOWN OR COMMUNITY</b> Harts Town		<b>COUNTY</b> Jefferson		<b>NEGATIVE NO.</b> 8.7-10		<b>NOT VISIBLE FROM ROAD</b> <input type="checkbox"/>	
<b>ARCHITECT/BUILDER</b> Unknown		<b>DATE OF CONSTRUCTION</b> 1890-1905		<b>STORIES</b> 1			
<b>NAT. REGISTER LISTED</b> <u>n/a</u> <b>STATE REGISTER LISTED</b> <u>n/a</u>		<b>ROOFING MATERIAL</b> Slate		<b>EXTERIOR BUILDING FABRIC</b> Asphalt roll brick siding			
<b>PROPERTY USE OR FUNCTION</b> Abandoned (current); church (historic)		<b>TYPE OF FOUNDATION</b> Poured concrete		<b>STYLE (STAFF USE ONLY)</b>			
<b>SURVEY ORGANIZATION AND DATE</b> Michael Baker Jr., Inc. 501 Parkway View Dr. Pittsburgh, PA 15205 2/14/96		<b>QUADRANGLE NAME</b> Martinsburg					
		<b>PART OF WHAT SURVEY</b> West Virginia Route 9					
<b>SITE PLAN</b> MBI 042 and 043 JEFFERSON CO. TAX #MD 4/3 MBI 042 = 1-Story, Frame Church MBI 043 = 1-Story, Block Meeting House a = Outbuilding 		<b>SITE NO.</b> <input type="text"/>					

**EXHIBIT R - AFRICAN METHODIST EPISCOPAL CHURCH OF KEARNEYSVILLE  
SHPO SURVEY, PAGE 2**

MBJ RESOURCE #: 042

<b>PRESENT OWNERS</b> (b) (5) Privacy, (b) (7)(C) Encl	<b>OWNER ADDRESS</b> (b) (5) Privacy, (b) (7)(C) Encl Kearneysville, WV 25430
---	--

**GENERAL CONDITION OF PROPERTY**  
Neglected

**ADDITIONS** ☒ Yes ☐ No **IF YES, DESCRIBE**

**ALTERATIONS** ☒ Yes ☐ No **IF YES, DESCRIBE**  
Asphalt roll brick siding.

**NO. AND NATURE OF OUTBUILDINGS**  
None.

**DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)**

The Methodist Episcopal Church is one-story high and has a one-room, rectangular plan with a projecting rear choir supported by concrete piers. The abandoned church is one bay wide and three bays deep. The frame church is clad with asphalt roll brick siding over drop wood siding, and the front-gable roof is sheathed in slate. The fenestration consists of one-over-one double-hung lancet arch windows with wood lug sills. A projecting gabled vestibule fitted with a set of double four-panel doors is centered on the front facade. A second entrance is located on the right side of the vestibule. Inside the vestibule, another set of double four-panel doors opens into the church nave. These doors are capped by an arched two-light transom with diagonal patterned stained glass. The church is in a collapsed state and is in an overgrown setting.

**HISTORICAL/CULTURAL SIGNIFICANCE**

The Methodist Episcopal Church was constructed some time after a parcel of land was purchased by (b) (5) Privacy, (b) (7)(C) Encl trustees for the Methodist Episcopal Church of Kearneysville, from (b) (5) Privacy, (b) (7)(C) Encl in 1890 (JCDB W:293). Abandoned for many years and in a severely deteriorated condition, the property does not retain sufficient integrity to qualify as a significant historic resource. Therefore, the Methodist Episcopal Church should be considered not eligible for inclusion in the National Register of Historic Places.

**BIBLIOGRAPHICAL REFERENCES**

Jefferson County Deed Book W: 293.  
  
McAlester, Virginia and Lee McAlester  
1990 A Field Guide to American Houses. New York: Alfred A. Knopf.  
  
Phillips, Steven J.  
1992 Old House Dictionary. Washington D.C.: Preservation Press.

**FORM PREPARED BY**  
Cynthia A. Liccese and Connie Torbeck

**DATE**  
04/01/96

**ADDRESS**  
Michael Baker Jr., Inc.  
501 Parkway View Dr.  
Pittsburgh, PA 15205



**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO  
SURVEY, PAGE 1**



*A. T.*

**WEST VIRGINIA HISTORIC PROPERTY  
INVENTORY FORM**

STREET ADDRESS Off Oak Tree Road on east side of CSX tracks		COMMON/HISTORIC NAME Concrete-block Dwelling	NO. IN SURVEY JF-0018 - 0057	NO. OF BAYS 3 FRONT 2 SIDE
TOWN OR COMMUNITY Kearneysville		COUNTY Jefferson	NEGATIVE NO. 4766 (7)	NOT VISIBLE FROM ROAD <input type="checkbox"/>
ARCHITECT/BUILDER		DATE OF CONSTRUCTION ca. 1930s	EXTERIOR BUILDING FABRIC concrete block	
NAT. REGISTER LISTED _____ STATE REGISTER LISTED _____		ROOFING MATERIAL standing-seam metal	STYLE (STAFF USE ONLY) <i>no style</i>	
PROPERTY USE OF FUNCTION Single family residential abandoned		TYPE OF FOUNDATION concrete block	PHOTOGRAPH (2" x 3" CONTACT)	
SURVEY ORGANIZATION AND DATE John Milner Associates, Inc. October 8, 1992		QUADRANGLE NAME Martinsburg		
		PART OF WHAT SURVEY West Virginia Route 9		



Site No.  
JMA 033

035

**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO  
SURVEY, PAGE 2**

PRESENT OWNERS

OWNER ADDRESS

GENERAL CONDITION OF PROPERTY

ruinous

ADDITIONS

☐

YES

☒

NO

IF YES, DESCRIBE

ALTERATIONS

☐

YES

☒

NO

IF YES, DESCRIBE

NO. AND NATURE OF OUTBUILDINGS

None

DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)

This house, located off Oak Tree Road in Hart's Town, is a one-story, three-bay, gable-roofed dwelling with a raised basement. The walls are constructed of concrete block and the house is built into a hill. Fenestration consists of three-over-one, double-hung sash, indicating a ca. 1930s construction date. The gable ends are sheathed in weatherboard, and a concrete interior flue protrudes from the roof ridge.

HISTORICAL/CULTURAL SIGNIFICANCE

This concrete-block, ca. 1930s, dwelling is representative of the type of residences commonly built in the African-American village of Hart's Town in the early twentieth century. Abandoned and in poor condition, it is recommended not eligible for the National Register.

BIBLIOGRAPHICAL REFERENCES

FORM PREPARED BY Margarita J. Wuellner

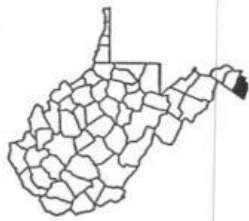
DATE 10-8-92

ADDRESS John Milner Associates, Inc.  
5250 Cherokee Avenue, 4th Floor  
Alexandria, VA 22312




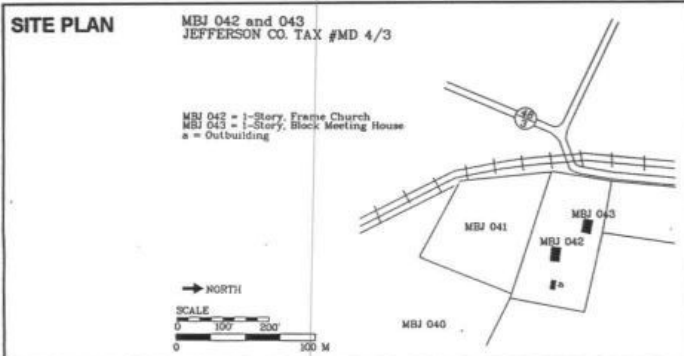
# EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO SURVEY, PAGE 3

MBJ RESOURCE #: 043



## WEST VIRGINIA HISTORIC PROPERTY INVENTORY FORM

<b>STREET ADDRESS</b> East side of CSX Railroad	<b>COMMON/HISTORIC NAME</b> <input checked="" type="checkbox"/> Common <input checked="" type="checkbox"/> Historic <input checked="" type="checkbox"/> Both Methodist Episcopal Meeting House	<b>NO. IN SURVEY</b> SF-0078-0057	<b>NO. OF BAYS</b> 3 FRONT 2 SIDE
<b>TOWN OR COMMUNITY</b> Harts Town	<b>COUNTY</b> Jefferson	<b>NEGATIVE NO.</b> 8.11	<b>NOT VISIBLE FROM ROAD</b> <input type="checkbox"/>
<b>ARCHITECT/BUILDER</b> Unknown	<b>DATE OF CONSTRUCTION</b> 1945	<b>STORIES</b> 1	
<b>NAT. REGISTER LISTED</b> DATE <u>n/a</u> <b>STATE REGISTER LISTED</b> DATE <u>n/a</u>	<b>ROOFING MATERIAL</b> Standing seam metal	<b>EXTERIOR BUILDING FABRIC</b> Concrete block	
<b>PROPERTY USE OR FUNCTION</b> Abandoned (current); meeting house (historic)	<b>TYPE OF FOUNDATION</b> Concrete block	<b>STYLE (STAFF USE ONLY)</b>	
<b>SURVEY ORGANIZATION AND DATE</b> Michael Baker Jr., Inc. 501 Parkway View Dr. Pittsburgh, PA 15205 2/14/96	<b>QUADRANGLE NAME</b> Martinsburg		
	<b>PART OF WHAT SURVEY</b> West Virginia Route 9		



SITE NO.

**EXHIBIT S - AFRICAN METHODIST EPISCOPAL MEETING HOUSE SHPO  
SURVEY, PAGE 4**

MBJ RESOURCE #: 043

**PRESENT OWNERS**

(b) (5) Privacy, (b) (7)(C)

**OWNER ADDRESS**

(b) (5) Privacy, (b) (7)(C) EOP

Kearneysville, WV 25430

**GENERAL CONDITION OF PROPERTY**

Neglected

**ADDITIONS**

IF YES, DESCRIBE

☒ Yes

☐ No

**ALTERATIONS**

IF YES, DESCRIBE

☒ Yes

☐ No

**NO. AND NATURE OF OUTBUILDINGS**

None.

**DESCRIPTION OF PROPERTY (ORIGINAL AND PRESENT)**

The Methodist Episcopal Meeting House is a one-story, rectangular plan, concrete block building that currently stands abandoned. The building is three bays wide and two bays deep. The building is built into a hillside so that an entrance on the front gable leads into the basement, and an entrance on the rear gable end leads into the first floor. The unfinished basement has a dirt floor. The gable ends are clad with weatherboard and the side-gable roof is sheathed with standing seam metal. The fenestration consists of three-over-one double-hung sash windows set into plain wood frames. A concrete block interior chimney straddles the roof ridge.

**HISTORICAL/CULTURAL SIGNIFICANCE**

The Methodist Episcopal Meeting House, used in conjunction with the neighboring African-American Methodist Episcopal Church, was built circa 1940-1945. The building, which has been abandoned for a long period of time, stands in a deteriorated condition. All of the doors and windows are missing, and the interior has been damaged by exposure to the elements and neglect. The meeting house is a simple vernacular form lacking architectural distinction. The building does not retain sufficient integrity to qualify as a significant historic resource. Therefore, the Methodist Episcopal Meeting House could be considered not eligible for inclusion in the National Register of Historic Places.

**BIBLIOGRAPHICAL REFERENCES**

McAlester, Virginia and Lee McAlester  
1990 A Field Guide to American Houses. New York: Alfred A. Knopf.

Phillips, Steven J.  
1992 Old House Dictionary. Washington D.C.: Preservation Press.

**FORM PREPARED BY**

Cynthia A. Liccese and Connie Torbeck

**DATE**

04/01/96

**ADDRESS**

Michael Baker Jr., Inc.  
501 Parkway View Dr.  
Pittsburgh, PA 15205

**EXHIBIT T - JEFFERSON COUNTY ASSESSOR AND TAX INFORMATION FOR  
AFRICAN METHODIST EPISCOPAL CHURCH AND MEETING HOUSE**

**Jefferson County West Virginia**  
**Tax Map Viewer**

Layers

- ☒ 2020 Parcels
- ☐ 2019 Parcels
- ☐ 2018 Parcels
- ☐ 2017 Parcels
- ☐ 2016 Parcels
- ☐ 2015 Parcels
- ☐ 911 Address
- ☒ Annotation

Identify

Find

Measurement

Print

Directions

Google Street View

Identify

Basemaps

102 11.10Ac

11.1 24 AC

1.1 3.05Ac

1 7.78Ac

12 56Ac

5 9Ac

12.15 11.12Ac

12.4

GRANNY

WVA RT9

WVA

Memorial Hwy

ROUTE

Highway

100m 300ft

esri

POWERED BY

Tax Year: 2020  
Parcel: 07 40003000000000  
Deeded Owner: M E CHURCH

Parcel ID: 07 40003000000000  
Tax Year: 2020  
Deeded Owner: M E CHURCH  
C/O:  
Owner Address:  
City:  
State:  
Zip: 40404  
Deed Book/Page: W/293  
Description: KEARNEYSVILLE  
Year Built: 0  
# Stories: 0  
Zoom to

**EXHIBIT U - JEFFERSON COUNTY ASSESSOR AND TAX INFORMATION FOR  
AFRICAN METHODIST EPISCOPAL CHURCH AND MEETING HOUSE**

ASSESSMENT DISTRICT		LEGAL DESCRIPTION				
MIDDLEWAY DIST. 7		Kearneysville Lot		EXEMPT		
MAP NO.	PLOT NO.	LOT SIZE	ACREAGE			
4	3	90 x 220 Irregular				
OWNER'S NAME		ADDRESS	DATE ACQUIRED	FED. TAX STAMPS	DEED BOOK	PAGE NO.
1	M. E. Church, Colored		5-11-1891		DB-W	293
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						



# EXHIBIT V - 05/03/19 USPS DELIVERY RECEIPT OF MR. SURKAMP'S REPORT TO WVSHPO

<b>USPS TRACKING#</b>  7402 3999 8079 9796 96		<b>First-Class Mail</b> <b>Postage &amp; Fees Paid</b> <b>USPS</b> <b>Permit No. G-10</b>
Sender: Please print your name, address, and ZIP+4® in this box® <div style="border: 1px solid black; padding: 5px; margin: 5px;"> <p>Jim Surkamp            PO Box 1035            Shepherdstown WV            25443</p> </div>		
<b>RECIPIENT: COMPLETE THIS SECTION</b> 1. Create items 1, 2, and 3. 2. Print your name and address on the reverse so that we can return the card to you. 3. Attach this card to the back of the mailpiece, or the front if space permits. Addressed to: 350N Pierce WV DN of Culture & History JPO 1900 Kanawha Rly Charleston WV 25305 East  590 9402 3999 8079 9796 96		<b>COMPLETE THIS SECTION ON DELIVERY</b> A. Signature  B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:
2. Number (Transfer from service label) 7019 0160 0000 1074 5531		3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
PS# 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt		

[Quick Tools](#)
[Mail & Ship](#)
[Track & Manage](#)
[Postal Store](#)
[Business](#)
[International](#)
[Help](#)

[English](#)
[Locations](#)
[Support](#)
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**Status**

**Delivered**

Your item has been delivered to an agent at 5:10 am on May 3, 2019 in CHARLESTON, WV 25301.

May 3, 2019 at 5:10 am  
 Delivered To Agent  
 CHARLESTON, WV 25301

**Delivered**

[Tracking History](#)

[Product Information](#)

[See Less](#)



EXHIBIT W - 2005 WV CEMETERY SURVEY FORM FOR THE CEMETERY, PAGE 1

West Virginia Cemetery Survey Form

1. Site Number (OFFICE USE ONLY): 465F507

2. Cemetery Name (Historic / Common, please circle): Jefferson Orchard Cemetery

3. County: Jefferson 4. 7.5' Quadrangle: Martinsburg

5. UTM Zone: 18 Easting 251748 Northing 4362351

6. Ownership: Public: Municipal \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Federal \_\_\_\_\_  
Private: Family \_\_\_\_\_ Church \_\_\_\_\_ Denomination \_\_\_\_\_  
Fraternal \_\_\_\_\_ Other Unknown

7. Burial Population (ethnic composition, general age of individuals, explain):  
Euro and African American

8. Public Accessibility: unrestricted x restricted \_\_\_\_\_ for permission to visit, contact

9. Access into Cemetery: by foot x by car \_\_\_\_\_

10. Terrain: On the edge of a low, rolling terrace.

11. Bounded by: fence \_\_\_\_\_ wall \_\_\_\_\_ hedge \_\_\_\_\_ other Road on south and west

12. Condition: well maintained \_\_\_\_\_ poorly maintained x  
overgrown, easily identifiable x overgrown, unidentifiable \_\_\_\_\_  
unidentifiable, but known to exist through tradition or other means (identify source)

13. Cemetery Size and Orientation (please give dimensions in feet, and indicate compass direction for long and short axis): 350 feet east/west and 150 feet north/south

14. Historical Background

Cemetery appears to be in original location. Many of the people buried here are veterans of WWI, WWII and Korea. Many headstones have fallen over. Some caskets appear to have been removed. The number of burials (53) is an approximation. Portions of this cemetery are very overgrown, and There are large gaps where no headstones are extant but burials may be there.

15. Form Completed By: J. Blake Date: 8-21-05

## EXHIBIT W - 2005 WV CEMETERY SURVEY FORM FOR THE CEMETERY, PAGE 2

Site Number: 46JF507 Cemetery Name: Jefferson Orchard Cemetery

16. Gravestones (Please list the number of gravestones that fit in the categories below. If this is a guess or an approximation, put "circa" before the number. Include photographs and/or sketches of representative decorative carvings.):

number of headstones 53 burials \_\_\_\_\_ Footstones? yes \_\_\_\_\_ no \_\_\_\_\_

number of gravestones with burial dates from the 18th century None

19th century None 20th century all

please list the earliest date 1900 most recent date 1994

number of gravestones of each material: slate \_\_\_\_\_ marble 3

granite 20 sandstone \_\_\_\_\_ fieldstone \_\_\_\_\_ other Unknown material

number of gravestones with decorative carvings of skulls none

faces none urns / willows none other (explain) Praying hands (1), crosses (4)

number of gravestones that are readable all eroded \_\_\_\_\_ badly tilted 3

cracked / broken \_\_\_\_\_ broken but standing 5

restoration efforts, if any none

17. Please attach: 1) a copy of the topographic quadrangle indicating the cemetery's location, and 20 general photograph (s) of the cemetery showing its setting and / or location.

## EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 1

Environmental  
Resources  
Management, Inc.

204 Chase Drive  
Hurricane, WV 25526  
(304) 757-4777  
(304) 757-4799 (fax)  
www.erm.com

March 7, 2017

Attn: Ms. Susan M. Pierce, Director  
Deputy State Historic Preservation Officer for Resource Protection  
West Virginia Division of Culture and History  
The Cultural Center  
1900 Kanawha Boulevard East  
Charleston, WV 25305-300



Subject: Information Consultation/ Data Request  
**Proposed Development Parcel; Granny Smith Lane**  
Kearneysville, Jefferson County, West Virginia  
39.374740° N, 77.878192° W  
**Martinsburg, WV USGS Quadrangle**

Ms. Pierce:

Environmental Resources Management (ERM) is supporting the environmental review for potential development of a parcel along Route 9 near to Kearneysville in Jefferson County, West Virginia. ERM recognizes that the West Virginia Division of Culture and History is the State Historic Preservation Office (SHPO), in addition to other agencies, and have the responsibility for consultation regarding the protection of various natural and cultural resources. ERM is pleased to provide the information contained in this submittal for your consultation in providing comments in identifying historic properties that are listed or eligible for listing on the National Register of Historic Places and archeological sites that may be impacted by this project.

The proposed development is located approximately 1.0 miles southeast of the town of Kearneysville, centered as the coordinates of approximately 39.374740° N, 77.878192° W. Currently the scope of work involves an environmental phase I site assessment. The approximate project area is shown on **Figure 1 - Site Location**. **Figure 2 - Property Extent** shows the approximate extent of the proposed development, which would mostly be designated for construction. The property is the site of former orchard operations and the rows of cultivated trees shown in the aerial imagery are no longer present.

Currently the limits of disturbance (LOD) is estimated at 150 acres. Please note, this acreage is a preliminary estimate. Of this 150 acres, approximately 4 acres are trees. ERM is not aware any archeological sites near the area, however, no archeological studies have been conducted. In addition, it is likely that the majority of soils on this site have been altered as this was the former site of an apple orchard.

**EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 2**

Page 2

Environmental  
Resources  
Management, Inc.

ERM respectfully requests your initial evaluation of our findings and comments or recommendations for the potential development on this property. If new or additional data is available for the site area, ERM welcomes the opportunity to review that information and incorporate it into our environmental review. If you have any questions concerning this submittal, please contact Matt Hurst at (607) 745-8619 or [matt.hurst@erm.com](mailto:matt.hurst@erm.com).

Sincerely,



Matt Hurst, PhD  
Associate Engineer, ERM

Enclosures





EXHIBIT X - 03/07/2017 ERM, INC. LETTER TO WVSHPO, PAGE 4





## EXHIBIT Y - 04/03/2017 WVSHPO LETTER TO ERM, INC., PAGE 1



April 3, 2017

*The Culture Center*  
1900 Kanawha Blvd., E.  
Charleston, WV 25305-0300

**Randall Reid-Smith, Commissioner**

Phone 304.558.0220 • [www.wvculture.org](http://www.wvculture.org)  
Fax 304.558.2779 • TDD 304.558.3562

11/13/04/SHPO/kyff

Matt Hurst, Ph.D.  
Associate Engineer  
ERM, Inc.  
204 Chase Drive  
Hurricane, West Virginia 25526

RE: Proposed Development Parcel – Granny Smith Lane, Kearneysville  
FR# 17-437-JF

Dear Mr. Hurst:

We have reviewed the above referenced project to determine potential effects to cultural resources. As required by Section 106 of the National Historic Preservation Act, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties," we submit our comments.

According to the submitted information, the project will result in the development of a parcel of land located along Route 9 near Kearneysville in Jefferson County. The limits of disturbance (LOD) is estimated at 150 acres, of which approximately four acres are comprised of former apple orchard trees.

#### Architectural Resources:

We cannot complete our review with the information submitted. Please forward photographs of any buildings and/or structures that will be within the project area and within the line-of-sight of the proposed above ground components of this project. We understand that the development of this site in conceptual at this time and it appears this is an effort to complete compliance to attract developers. There are several previously recorded properties on our WV SHPO GIS (<http://mapwv/shpo>) that if still standing will need updated information to determine if they are still eligible for the National Register of Historic Places. If there are no solid proposals and you wish to move forward we recommend for the view shed anticipating 2-3 story buildings. These photographs should be keyed to a USGS topographic map. We will provide additional comments upon receipt of the requested information; however, we reserve the right to request additional information, including the completion of Historic Property Inventory (HPI) forms.

#### Archaeological Resources:

Our records indicate that portions of the current project area underwent a Phase I archaeological survey for FR# 05-977-JF. One archaeological resource, 46JF501, was identified during that survey. This resource was determined not eligible for inclusion in the National Register of Historic Places.

However, the prior survey work does not investigate the entire current project area. Aerial photographs and project mapping denote the presence of buildings, including a early twentieth century farmstead, within the project area. Also, Civil War skirmishes and troop movements took place in the project area vicinity. As a result, we have concerns that there may be unrecorded archaeological deposits present. We, therefore, request that a Phase I archaeological survey be conducted in the portions of the project area that were not previously surveyed. The phase I survey should include a metal detector survey. We will provide further comment upon receipt of the resulting Phase I archaeological survey technical report.

**EXHIBIT Y - 04/03/2017 WVSHPO LETTER TO ERM, INC., PAGE 2**

April 3, 2017  
Dr. Hurst  
FR# 17-437-JP  
Page 2

Cemetery Resources:

Our records and project mapping note the presence of a cemetery, 46JF507, immediately adjacent to the project area. This cemetery does not have a determination of eligibility for the National Register of Historic Places at this time. Since it is presently not in the direct footprint of the project area only the viewshed would have to be evaluated should the cemetery be determined eligible. We will provide further comment upon receipt of the additional information.

Public Comments:

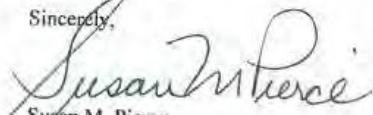
In addition, federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4) all stress the importance of public comment during the Section 106 process. If you have already completed this aspect of the requirements under Section 106, please provide written documentation of that along with any comments you have received. If you have not already done so, please forward a copy of the submitted information for the project to Jefferson County Historic Landmark Commission, allowing them the opportunity to comment on this project. Below is their contact information. Please forward any comments that you receive to this office. If you receive no comments, please indicate that *in writing* to this office. Please contact the below for further information.

Jefferson County Historic Landmark Commission  
Post Office Box 23  
Charles Town, West Virginia 25414

In addition to our usual comments, your letter requested "recommendations for the potential development on this property." It is our opinion, beyond the concerns mentioned above, that we do not have an interest in making specific recommendations for development this property at this time.

We appreciate the opportunity to be of service. *If you have questions regarding our comments or the Section 106 process, please contact, Carolyn Kender, Archaeologist, or Ernest E. Blevins, Structural Historian at (304) 558-0240.*

Sincerely,



Susan M. Pierce  
Deputy State Historic Preservation Officer

SMP/CMK/EEB



## EXHIBIT Z - 08/21/201 WVSHPO EMAIL TO JCHLC

**Kender, Carolyn M**

---

**From:** Kender, Carolyn M  
**Sent:** Tuesday, August 21, 2018 3:48 PM  
**To:** (b) (5) Privacy, (b) (7)(C) Enforcement Privacy  
**Cc:** Blevins, Ernest E  
**Subject:** cemeteries in vicinity of Rockwool Project in Jefferson County  
**Attachments:** 46-JF-507.pdf; 46-JF-584.pdf

(b) (5) Privacy, (b) (7)(C) En

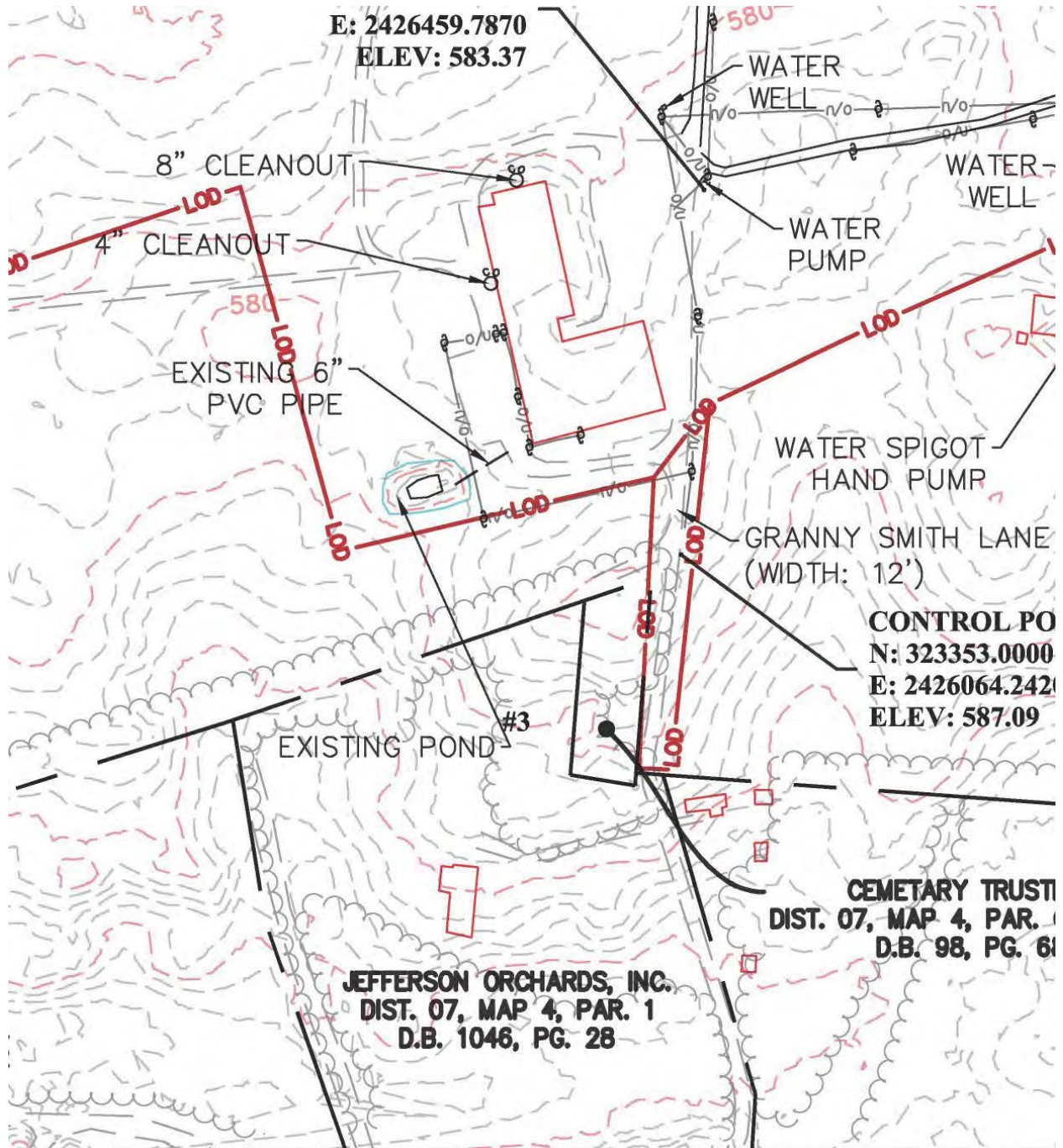
Thank you for notifying our office about concerns the Jefferson County HLC has received regarding potential impacts to a cemetery in the vicinity of the proposed Rockwool/Roxul project located off of Granny Smith Lane in Jefferson County. As I indicated in our phone conversation this morning, we have two documented cemeteries near the proposed Rockwool project area. The closest cemetery is the Jefferson Orchard Cemetery (46-JF-507), which is located immediately adjacent to the western edge of the Rockwool project area. The other cemetery is the St. Paul Baptist Church Cemetery (46-JF-584) and this resource is well outside the project's limits of disturbance. It is our understanding that the Jefferson Orchard Cemetery will not be impacted by the project's construction activities. As per your request, I have attached copies of the cemetery forms for these two resources. Once you have looked over the attached information, please let me know if the Jefferson Orchard Cemetery is the same cemetery that you have received the concerns about. If it is not the same cemetery, can you provide a location of the cemetery in question?

Thank you,

Carolyn M. Kender  
Archaeologist  
State Historic Preservation Office  
WV Department of Arts, Culture, and History  
The Culture Center (Building 9)  
1900 Kanawha Blvd, East  
Charleston, WV 25305-0300  
(304) 558-0240 ext. 719

[illegible]

# **EXHIBIT AA - WVDEP APPROVED ROCKWOOL STORMWATER CONSTRUCTION MAP CLOSEUP**



SCALE:	
DRAWN:	DATE:
CHECKED:	DATE:
APPROVED:	DATE:





**EXHIBIT BB - ROCKWOOL AND JEFFERSON ORCHARDS, INC. EASEMENT  
AGREEMENT FOR GRANNY SMITH LANE EMERGENCY ACCESS ROAD (DEED  
BOOK 1197 PAGE 680), PAGE 1**

5/14/2019

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**TEMPORARY EASEMENT AGREEMENT FOR EMERGENCY ACCESS**

**THIS TEMPORARY EASEMENT AGREEMENT FOR EMERGENCY ACCESS** ("Agreement") is dated October 20, 2017, and made effective on October 25, 2017 (the "**Effective Date**"), by and between **ROXUL USA INC.**, a Delaware corporation, having a mailing address of 4594 Cayce Road, Byhalia, Mississippi 38611, hereinafter referred to as GRANTOR, and **JEFFERSON ORCHARDS, INC.**, a West Virginia corporation, having a mailing address of P.O. Box 700, Kearneysville, West Virginia 25430, hereinafter referred to as GRANTEE.

**Recitals:**

A. Pursuant to that certain Real Estate Purchase and Sale Agreement dated July 7, 2017 (the "**Purchase Agreement**"), by and between Grantee, as seller, and Grantor, as buyer, Grantor will or has already acquired from Grantee approximately 130 acres of land, more or less, located in Ranson Corporation District, Jefferson County, West Virginia, which is more particularly described and shown on **Exhibit A** plat attached hereto and made a part hereof (the "**Grantor Property**").

B. Grantee has or will retain ownership to that certain tract or parcel of land located in Ranson Corporation District, Jefferson County, West Virginia, which is more particularly described and shown on **Exhibit A** plat attached hereto and made a part hereof (the "**Grantee Property**").

C. Pursuant to the Purchase Agreement, Grantor agreed to grant to Grantee a temporary easement for emergency access over the Grantor Property for the term of four (4) years to allow Grantee sufficient time to construct a second access road to the Grantee Property.

**NOW, THEREFORE, WITNESSETH:** That Grantor, for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby GRANT, BARGAIN, SELL, CONVEY and TRANSFER to Grantee a temporary, non-exclusive emergency access easement and right-of-way for vehicular ingress and egress during the Term (as defined below), over and across a portion of the Grantor Property being more particularly described on that certain **Exhibit A** plat attached hereto and made a part hereof (the "**Emergency Easement**").

TO HAVE AND TO HOLD the same during the Term, as defined below, with all rights and appurtenances thereunto belonging, unto Grantee, its successors or assigns.

PROVIDED, HOWEVER, IT BEING UNDERSTOOD AND AGREED between Grantor and Grantee that the Emergency Easement granted herein shall be subject to the following terms and conditions:



## EXHIBIT CC - JCHLC 10/10/18 MEETING MINUTES



### Jefferson County Historic Landmarks Commission October 10, 2018 Jefferson County Commission Meeting Room

Members present: Martin Burke, Chairman, H.S. Leigh Koonce, Jack Hefestay, Ben Horter, Tony Troxel.

Guests present: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Jim Surkamp, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and three others.

Mr. Burke called meeting to order at 7:04 pm

#### Public Comment:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke with regard to his opposition to Rockwool and requested the HLC weigh in regarding the smoke stacks that will be erected.

-Jim Surkamp spoke with regard to Rockwool and highlighted the proximity to the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property and the Greenback Raid.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy questioned the membership of the HLC and its publication of meeting minutes. She also spoke in opposition to Rockwool.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke against the Rockwool project and highlighted the proximity of her family farm, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the project.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy also raised concerns about the Charles Town Presbyterian Church Cemetery and its relocation.

Mr. Burke responded to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and indicated the property is within a municipal boundary and, thus, not under the jurisdiction of the HLC. Mr. Burke spoke with Seth Rivard, Charles Town City Planner, and Mr. Rivard indicated Charles Town is not taking a position relating to the cemetery.

Mr. Burke introduced Tony Troxel who was appointed by the County Commission to the vacancy created by the resignation of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy.

**August Minutes:** Mr. Horter moved to approve the minutes as presented. Mr. Hefestay seconded the motion which passed unanimously.

EXHIBIT DD - 07/24/17 THRASHER LETTER TO WVSHPO

# THRASHER

July 24, 2017

Mr. Ernest Blevins, MFA  
Structural Historian for Review and Compliance  
West Virginia Division of Culture & History  
West Virginia State Historic Preservation Office  
1900 Kanawha Boulevard East  
Charleston, West Virginia 25305  
304-558-0240, ext. 726  
[ernest.e.blevins@wv.gov](mailto:ernest.e.blevins@wv.gov)

**RE: Section 106 Review Request: Supplemental Information  
Proposed Development Parcel - Granny Smith Lane  
Route 9, Kearneysville, Jefferson County, WV  
TTG Project #101-030-3203  
FR# 17-437-JF**

Dear Mr. Blevins:

Pursuant of Section 106 Clearance and per correspondence letter dated April 3, 2017, The Thrasher Group, Inc. (Thrasher) is writing to your office to indicate that Thrasher did not receive comments, concerns, opinions, or questions from the Jefferson County Historic Landmark Commission within the thirty (30) day comment window regarding the Proposed Development Parcel - Granny Smith Lane Project, FR# 17-437-JF.

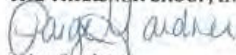
Consulting Parties/Public Comments:

Federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4), all stress the importance of public comment and involving local government representatives and organization that have demonstrated interest in historic preservation or the undertaking in the Section 106 review process. Therefore, we forwarded a copy of the submitted information for the above-mentioned project to the Jefferson County Historic Landmark Commission to request comments or opinions on this matter on June 5, 2017 (please see **Attachment A**). The letter requested response within thirty (30) days of the date of the letter (i.e., ending July 5, 2017). No comments, concerns, opinions, or questions were received from the Jefferson County Historic Landmark Commission.

If any further documentation or information is required for this project, or if any questions or concerns should arise, please feel free to contact me at (304)-423-5318 or [pgardner@thetrashereng.com](mailto:pgardner@thetrashereng.com).

Sincerely,

THE THRASHER GROUP, INC.

  
Paige Gardner  
Environmental Scientist

Enclosures (1):

**Attachment A - Correspondence with the Jefferson County Historic Landmark Commission**

# THRASHER

June 5, 2017

Jefferson County Historic Landmark Commission  
Post Office Box 23  
Charles Town, West Virginia 25414

**RE: WVSHPO Section 106 Review**  
**Proposed Development Parcel – Granny Smith Lane**  
**Route 9, Kearneysville, Jefferson County, WV**  
**FR# 17-437-JF**

To whom it may concern:

The Thrasher Group, Inc. (Thrasher) is submitting to your office notification of a proposed site development project near the intersection of USGS Charles Town, Martinsburg, Middleway, and Shepherdstown 7.5 minute quadrangles in Jefferson County, West Virginia (WV).

The Proposed Development Parcel – Granny Smith Lane project is located approximately 1.0 miles southeast of Kearneysville, northeast of Route 9, at approximate coordinates 39.375353°N, 77.877569°W; please see **Figure 1: Site Location (USGS)** and **Figure 2: Site Location (Aerial)**, enclosed. The subject property boundary encompasses 145 acres and shows the preliminary extent of the proposed site development, which would mostly be designated for construction. The development of this site is conceptual at this time. The subject property boundary is the site of former orchard operations and the rows of cultivated trees shown in the aerial imagery are no longer present.

The project area and/or its view shed have been previously disturbed by agricultural, commercial, highway, industrial, and residential development and use. A review of the National Register of Historic Places (NHRP) indicated the following places as the closest historic listings:

1. Historic Place Name: (b) (6) Privacy, (b) (7)(C) Enforcement Only Farm  
Address: (b) (6) Privacy, (b) (7)(C) Enforcement Only Kearneysville, Jefferson County, WV  
Geographic Coordinates: (b) (6) Privacy, (b) (7)(C) Enforcement Only  
NPS Reference Number: (b) (6) Privacy, (b) (7)(C) Enforcement Only  
Date Listed: 12-04-1998  
Approximately 0.36 air miles northwest from Proposed Project Site
2. Historic Place Name: (b) (6) Privacy, (b) (7)(C) Enforcement Only  
Address: (b) (6) Privacy, (b) (7)(C) Enforcement Only Shenandoah Junction, Jefferson County, WV  
Geographic Coordinates: (b) (6) Privacy, (b) (7)(C) Enforcement Only  
NPS Reference Number: (b) (6) Privacy, (b) (7)(C) Enforcement Only  
Date Listed: 12-12-1976  
Approximately 0.73 air miles east from Proposed Project Site
3. Historic Place Name: (b) (6) Privacy, (b) (7)(C) Enforcement Only Farm  
Address: (b) (6) Privacy, (b) (7)(C) Enforcement Only Shenandoah Junction, Jefferson County, WV  
Geographic Coordinates: (b) (6) Privacy, (b) (7)(C) Enforcement Only  
NPS Reference Number: (b) (6) Privacy, (b) (7)(C) Enforcement Only  
Date Listed: 11-04-1994  
Approximately 0.62 air miles east from Proposed Project Site



# THRASHER

Jefferson Co. Historic Landmark Commission  
June 5, 2017  
Page 2 of 2


Additionally, the Division of Culture and History's GIS database revealed that a Phase I archaeological survey for FR#05-977-JF was previously conducted on approximately 40 acres in the southeast corner of the property when soil was removed during the construction of Route 9. One archaeological resource, 46JF501, was identified during that survey. This resource was determined not eligible for inclusion in the National Register of Historic Places.

The WV State Historic Preservation Office (SHPO) issued a correspondence letter, dated April 3, 2017, requesting a line-of-sight photograph log and keyed mapping of the proposed aboveground components of this project with the recommendation for the view shed anticipating 2-3 story buildings. The SHPO also expressed concerns that there may be unrecorded archaeological deposits present because mapping denotes the presence of buildings, including an early twentieth century farmstead, within the project area; also, Civil War skirmishes and troop movements took place in the vicinity. As a result, SHPO requested that a Phase I archaeological survey be conducted in the portions of the project area that have not previously been surveyed. Additionally, the SHPO recommended a copy of the submitted information for the project be provided to the Jefferson County Historic Landmark Commission, allowing the opportunity to comment on this project. Field work, including: view shed analysis, cemetery resource review, archaeological pedestrian survey, shovel testing and/or deep testing, and metal detector survey, commenced on May 15, 2017. Upon completion of the field work and any additional research that is conducted, a report of the investigation findings will be produced for submittal to the WVSHPO for review.

Federal regulations in 36 CFR 800.2(d)(1), 800.2(d)(2), 800.3(e), 800.6(a)(4), all stress the importance of public comment and involving local government representatives and organization that have demonstrated interest in historic preservation or the undertaking in the Section 106 review process. Therefore, we are forwarding a copy of the submitted information for the above-mentioned project to the Jefferson County Historic Landmark Commission to request your comments or opinions on this matter. Please respond with any comments, concerns, opinions or questions regarding the Proposed Development Parcel – Granny Smith Lane project within thirty (30) days of the date of this letter to the contact information below:

The Thrasher Group, Inc.  
Mrs. Paige Gardner, *Environmental Scientist*  
600 White Oaks Boulevard  
Bridgeport, WV 26330  
(304) 423-5318  
[pgardner@thrashereng.com](mailto:pgardner@thrashereng.com)

Sincerely,  
THE THRASHER GROUP, INC.



PAIGE GARDNER  
Environmental Scientist

Enclosures (2):  
Figure 1: Site Location Map (USGS)  
Figure 2: Site Location Map (Aerial)

610 White

940 • Bridgeport, WV

• 304 • 7631 • • www.thrashereng



## EXHIBIT FF - JCHLC 07/12/2017 MEETING MINUTES, PAGE 1



### Minutes

Jefferson County Historic Landmarks Commission  
7pm – County Commission Meeting Room  
200 E Washington Str., Charles Town, WV  
July 12, 2017

Members Present: Martin Burke (Chair), Leigh Koonce, Sara Lambert (Secretary) Guests:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

M. Burke called the meeting into order at 7:00 pm.

**Public Comment:** None.

**Meeting Minutes:** Minutes of the May meeting were submitted by Sara Lambert and

(b) (6) Privacy, (b) (7)(C)

Acceptance was moved by L. Koonce, seconded by M. Burke, and passed.

**Treasurer's Report:** M. Burke presented the treasurer's report including the balance and that they will be carrying \$10,000 into the next fiscal year. M. Burke also stated that the Landmarks Commission will be receiving WV Fairs and Festival grant for \$4,752 for events at Peter Burr Farm. M. Burke stated the income and the expenses.

Acceptance was moved by L. Koonce, seconded by S. Lambert, and passed.

**FY-18 Budget:** M. Burke presented the FY-18 budget and there was discussion on various line items. M. Burke suggested to the commission that they should join the National Association for Preservation Commission. The Landmarks Commission has received two grants. One was from the EWV Community Foundation for the Coyle Cemetery and the other was a WV Humanities grant for the printing of two brochures, "The Battle of Shepherdstown" and "The Shepherdstown Cement Mill". The Commission is still waiting to hear about for a grant from the CVB for the John Brown Driving Tour brochure printing.

Acceptance was moved by S. Lambert, seconded by L. Koonce, and passed.

**Duffields Depot:** The commission discussed what could be a possible outcome for the ownership if Duffield's Depot Inc. ceases to exist. The Commission discussed possible outcomes and decided that more research needed to be done before decisions were made.

**Peter Burr Farm Event application for 2018:** An application was submitted to JC Parks and Rec to hold the Blue Ridge Arts and Crafts Festival on May 8<sup>th</sup>, 2018 from 10am to 6pm at the Peter Burr Farm. L. Koonce moved to deny application but there was no second. After discussing the application further, the commission decided that it would be best for more questions to be answered before approving or denying the application.

**Our History Our Community endowment fund:** M. Burke reported pledges of \$20K. He is preparing a request letter and working with local Chamber of Commerce groups to reach out.

**WV GeoExplorer Project:** (b) (6) Privacy, (b) (7)(C) Enforcement Privacy would be working on technical support for the Kickstarter Project.

## EXHIBIT FF - JCHLC 07/12/2017 MEETING MINUTES, PAGE 2

### ANNOUNCEMENTS AND COMMISSIONER REPORTS:

- A. Status of NR nomination – (b) (5) Privacy, (b) (7)(C) Enforcement Privacy currently revising draft paperwork with SHPO.
- B. Historic Preservation Zoning Ordinance: M. Burke reviewed at PC public workshop Tues July 11. Draft Zoning Ordinance is currently in a 2-week comment period.
- C. JC Courthouse Committee: L. Koonce stated committee is waiting for a new judge to be appointed before the next meeting would take place.
- D. Concept Plan Reviews: M. Burke working with WV Highway Dept. on the Rte. 340 extension proposal.
- E. Status of NR nomination – *The Rocks*: (b) (5) Privacy, (b) (7)(C) Enforcement Privacy out of town so will update a future meeting.
- F. (b) (5) Privacy Cemetery grant application: Grant received. Stone mason hired. Walls to be relayed in September
- G. Status of grant application to WV Humanities Council: Grant received.
- H. ABPP Grant for PHF, LLC Tracts: Pass-through grant approved. Land Trust for the Eastern Panhandle to hold easement once (b) (5) Privacy house is torn down. (b) (5) Privacy, (b) (7)(C) Enforcement Privacy prepared 106 Compliance Report. Title recorded-on June 29, 2017.

S. Lambert made a motion to adjourn, which was seconded by L. Koonce. The motion passed and the meeting was adjourned at 8:39pm.

## EXHIBIT GG - JCHLC 12/13/2017 MEETING MINUTES, PAGE 3

Two months ago, (b) (6) Privacy sent a package to (b) (6) Privacy, (b) (7)(C) Enforcement, who is still reviewing the material. (b) (6) Privacy, (b) (7)(C) Enforcement is going to remind his father that this is an active project he would like to advance.

### e. Status of Roxul - Section 106 review- Horter

Roxul is building a rock wool insulation factory in the Bardane area. Horter attended a breakfast meeting at Hollywood Casino. They are already moving dirt. Their 106 was approved. This is part of the National Preservation Act - any federal undertaking must comply and take into account potential damage to historic resources. Burke is going to call the nearby fruit research station to make sure they're aware of the pollution that will be caused by the new insulation plant.

### f. Status of Rte. 340 – MOU with WVDOH – Horter

The MOU was already approved. Because of 106 compliance for the extension of Route 340, the JCHLC will be given funds to pay for National Register research for the affected farms. Submission of the nominations will be based on the research and whether the JCHLC can secure the owners' approval.

### g. Status of preservation easement for (b) (6) Privacy, (b) (7)(C) Enforcement farm – Horter

Horter has been going through the information. Burke would insist that any utilities are buried.

### h. Status of interpretative projects – Kelly

The courthouse brochure has been printed. Kelly is working on an interpretative panel for the (b) (6) Privacy, (b) (7)(C) Enforcement cemetery by (b) (6) Privacy, (b) (7)(C) Enforcement

### i. Status of NR nomination – *The Rocks* – Kelly

Kelly is continuing to work on this between projects.

### j. Research on nominating the JC Courthouse as a NHL – Kelly

The NPS says there are no restrictions for NHL owners unless federal funds are being used. Burke will ask the county commission for permission to have the courthouse nominated. Kelly will write a briefing statement explaining the significance of the courthouse and its historic integrity, which will be sent to the NPS for review. NPS will send a representative to determine whether the building is eligible, then a nomination will need to be written. A large amount of research has already been done with (b) (6) Privacy, (b) (7)(C) Enforcement Privacy historic structures report.

## VI. JANUARY 2018 JCHLC MEEING – CANCELED



**AS (b) (6) Privacy, (b) (7)(C) Enforcement Privacy**





# EXHIBIT II - MOUNTAINEER GAS MAP SHOWING A.M.E. CHURCH PROPERTY AS (b) (6) Privacy, (b) (7)(C) Enforcement Privacy - CLOSEUP

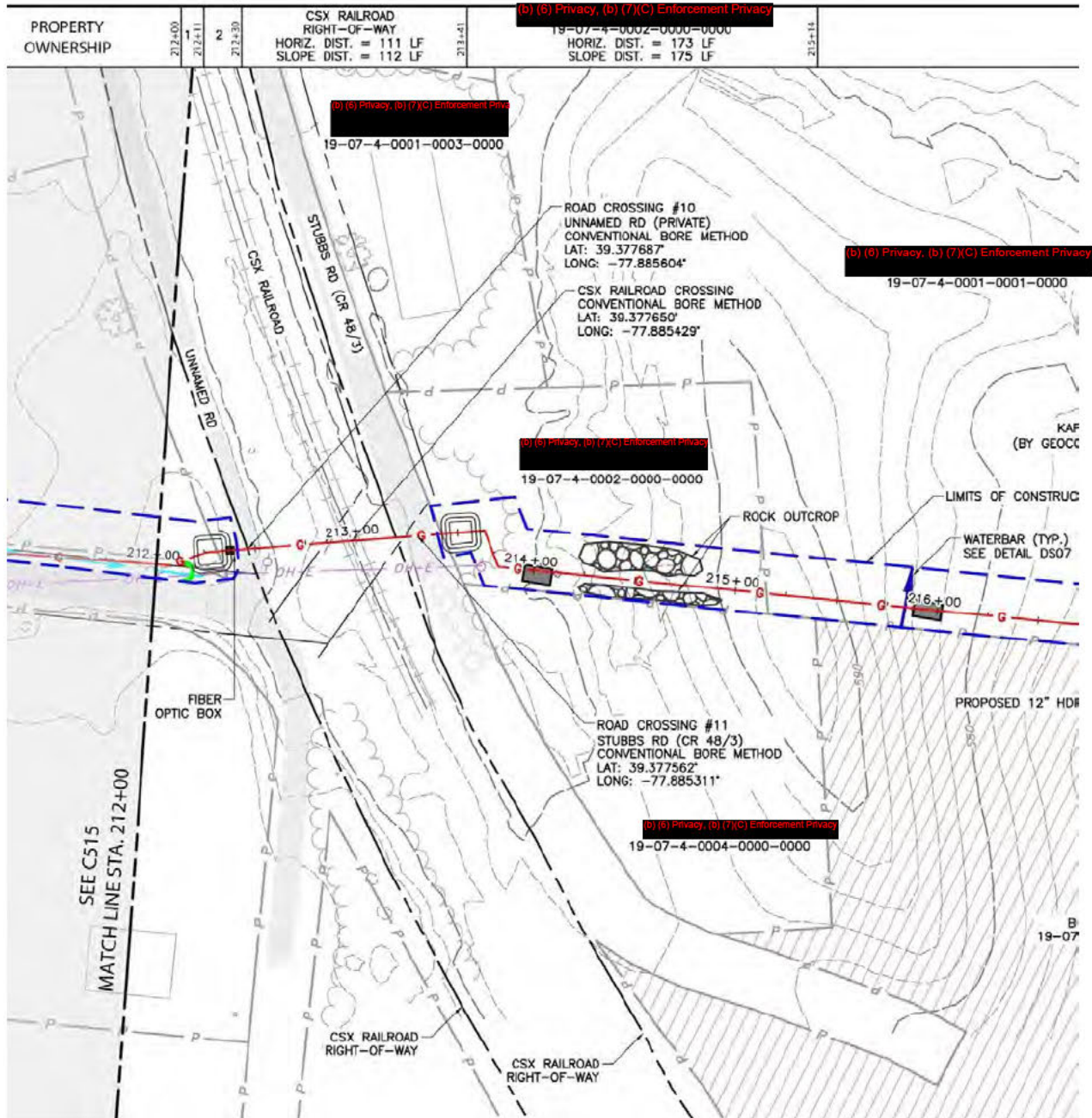
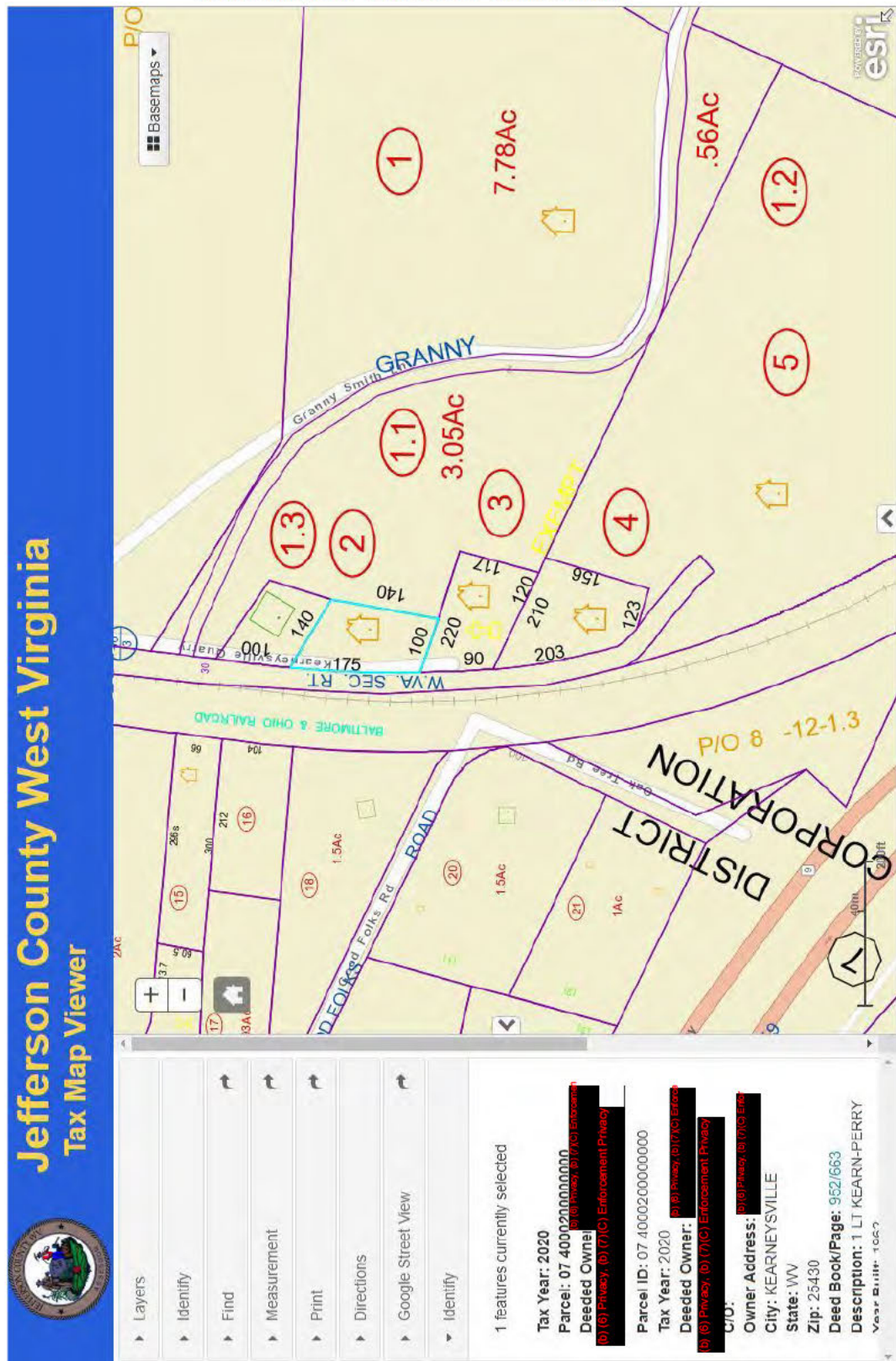


EXHIBIT JJ - (b) (6) Privacy, (b) (7)(C) Enforcement Privacy PROPERTY ACCORDING TO  
JEFFERSON COUNTY TAX MAPS





**EXHIBIT KK - MOUNTAINEER GAS AND EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 1**

6/7/2019

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22404  
Jefferson County  
Jacqueline C. Skidlar, Clerk  
Instrument: 20190006333  
06/19/2019 @ 01:46:32 PM  
RIGHT OF WAY & EASEMENT  
Book: 1221 + Page: 278  
Pages Recorded: 7  
Recording Cost: \$ 35.00  
Transfer Tax: \$ 158.40  
Total Land Tax: \$ 73.20

This Right-of-Way and Easement is entered into this 22 day of December, 2018, by (b) (6) Privacy, (b) (7)(C) Enforcement Privacy with an address of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, Kearneysville, West Virginia 25430, hereinafter, whether singular or plural, called the "Grantor," and Mountaineer Gas Company, a West Virginia company, with its principal place of business located in Charleston, Kanawha County, West Virginia, hereinafter called "Mountaineer".

**WITNESSETH**

**WHEREAS**, the Grantor is the owner of that certain property situated in Middleway District, Jefferson County, State of West Virginia, and identified as Tax Parcel Identification number 19-07-0004-0004-0000 and 19-07-0004-0001-0001, assessed as 1 LT Hartstown and 3 2/3 acres, more or less and as vested in the Grantor by that First and Final Settlement of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy recorded on October 12, 2000, Book 135, Page 216, Final Settlement of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy recorded January 13, 2015, Book 153, Page 619, Final Settlement of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy recorded on 12-14-2018, Book 32, Page 11, recorded May 26, 1948, Deed Book 172, at Page 467 and recorded June 21, 1963, Deed Book 260, Page 457 of record in the Office of the Clerk of the County Commission of said County (the "Property"); and

**WHEREAS**, in order to provide its services to and for West Virginia customers, Mountaineer has requested from Grantor this Right-of-Way and Easement for the purposes set forth herein, on and through the Property as set forth herein.

**NOW THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) for a right of way and easement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Mountaineer hereby agree as follows:

Return To: Lori Skidlar  
Mountaineer Gas Company  
P.O. Box 5201  
Charleston, WV 25301-0201

**EXHIBIT KK - MOUNTAINEER GAS AND EASEMENT AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 2**

6/7/2019

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**GRANT.** Grantor hereby grants and conveys to Mountaineer, its successors and assigns, a permanent easement and the exclusive right to construct, lay, maintain, operate, replace, relocate, repair, change the size of, and abandon or remove, drips, valves, measuring and regulating equipment, and other appurtenant facilities necessary or convenient thereto, including, but not limited to, equipment, pigging conduits and telecommunication and/or cathodic protection, for the transportation of natural gas, and other associated fluids on, over, and across the Property

**PERMANENT RIGHT-OF-WAY AREA.** The right-of-way area shall be Twenty (20'), with Ten (10') generally on each side of the pipeline as more specifically shown on Exhibit "A" attached hereto and made a part hereof by this reference. The pipeline to be laid, together with reasonable, both on and off, right of way ingress, egress, and regress to and from same and the use of any existing roads on the premises for such access. The grant includes the right to clear, cut, trim, and/or remove any and all vegetation, trees, and brush and overhanging branches from the right-of-way by such means that Mountaineer in its sole discretion deems the most expeditious and convenient.

**TEMPORARY CONSTRUCTION EASEMENT.** In addition to the permanent right-of-way area as set forth above, Grantor conveys to Mountaineer a Thirty (30') temporary easement of an additional work space and adjoining the permanent pipeline right-of-way as shown on Exhibit A, for the purpose of enabling Mountaineer, its employees, agents and/or contractors to initially construct the pipeline and appurtenances or to later relocate the pipeline or lay additional pipeline and to conduct all activities incident thereto, including restoration or clean-up activities.

**GRANTOR'S USE OF PROPERTY.** Grantor shall have full use and enjoyment of the Property except for the purposes herein granted to Mountaineer. Grantor shall not change the depth of cover over the width of the right-of-way areas defined above, or of any installed pipeline without the written consent of Mountaineer, and shall not place or permit to be placed any temporary or permanent structure or obstruction of any kind, including but not limited to, buildings, mobile homes, trees, fences with posts or foundations, power poles or shrubs taller than five (5) feet at maturity or the like on or over the right-of-way area of any installed pipeline, and shall not store any materials of

Return To: Lori Sheffield  
Mountaineer Gas Company  
P.O. Box 5201  
Charleston, WV 25301-0201



EXHIBIT KK -MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT  
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 3

6/7/2019

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any kind or operate or allow to be operated any heavy machinery or equipment over the right-of-way area without Mountaineer consent.

**MOUNTAINEER'S OBLIGATIONS.** It is distinctly understood and agreed that Mountaineer shall be responsible for any damages to persons or property that may result from Mountaineer's negligent or careless installation, use and/or removal of said facilities and/or equipment. Mountaineer shall replace and restore the area disturbed by the activities contemplated hereunder, to as near as practical to its original condition. Where reasonably practicable, all pipe, service connections and/or other appurtenances shall be buried so as not to interfere with the present use of the land.

**PAYMENT OF DAMAGES; ARBITRATION.** After initial construction, Mountaineer shall pay for or, at its sole discretion, repair damages to livestock, crops, and permitted fences in the event that such damages are caused by its operations. Said damages, if not mutually agreed upon by Grantor and Mountaineer, shall be ascertained and determined by three disinterested persons, one appointed by Grantor, one appointed by Mountaineer, and the third appointed by the two so appointed as aforesaid. Mountaineer shall pay for the cost of its appointee, Grantor shall pay for the cost of its appointee, and the parties shall share the cost of the third appointee. The award and decision of such three persons shall be final and conclusive.

**DECLARATION OF CONSIDERATION.** Under the penalties of fine and imprisonment as provided by W.Va. Code §11-22-1 and applicable law, Mountaineer declares that the total value of the interest in real property transferred by this agreement is Thirty Six Thousand Dollars \$36,000.00, and, therefore, said transfer is not subject to the State excise tax.

**EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT  
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 4**

6/7/2019

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WITNESS the following signature(s) and, if applicable, seal(s):

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF WEST VIRGINIA

COUNTY OF Jefferson to wit:

I, Karen K. Olden, a Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy whose name is signed to the writing hereto annexed, bearing date on the 28th day of December 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 28th day of December 2018.

My commission expires May 30, 2023.

Notary Public



**EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT  
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 5**

6/7/2019

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5 of 7																
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DEED BOOK				1221		Suffix		278		Suffix						

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF WEST VIRGINIA

COUNTY OF Berkley to wit:

I, Katherine L. Watson, a Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, whose name is signed to the writing hereto annexed, bearing date on the 27 day of December, 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 27 day of December, 2018.

My commission expires May 14, 2020

Katherine L. Watson  
Notary Public



**EXHIBIT KK - MOUNTAINEER GAS AND (b) (6) Privacy, (b) (7)(C) Enforcement Privacy EASEMENT  
AGREEMENT FOR A.M.E. CHURCH PROPERTY, PAGE 6**

6/7/2019

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6 of 7																
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Navigation					Image					View					Print	
DEED BOOK				1221		Suffix		278		Suffix						

SIGNATURE OF GRANTOR

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

STATE OF PA  
COUNTY OF Delaware, to wit:

I, Susan Laura, Notary Public in and for said County and State, do certify that (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, whose name is signed to the writing hereto annexed, bearing date on the 22 day of Dec 2018, has this day acknowledged the same before me in my presence.

Given under my hand this 22 day of Dec, 2018.

My commission expires 4-19-19

Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Susan Laura, Notary Public  
Delaware County  
My Commission Expires April 19, 2019  
Commission Number 1188187

This document prepared by:  
Mountaineer Gas Company

Submitted for recordation in the office of the Clerk of the Commission of Jefferson County, West Virginia by \_\_\_\_\_

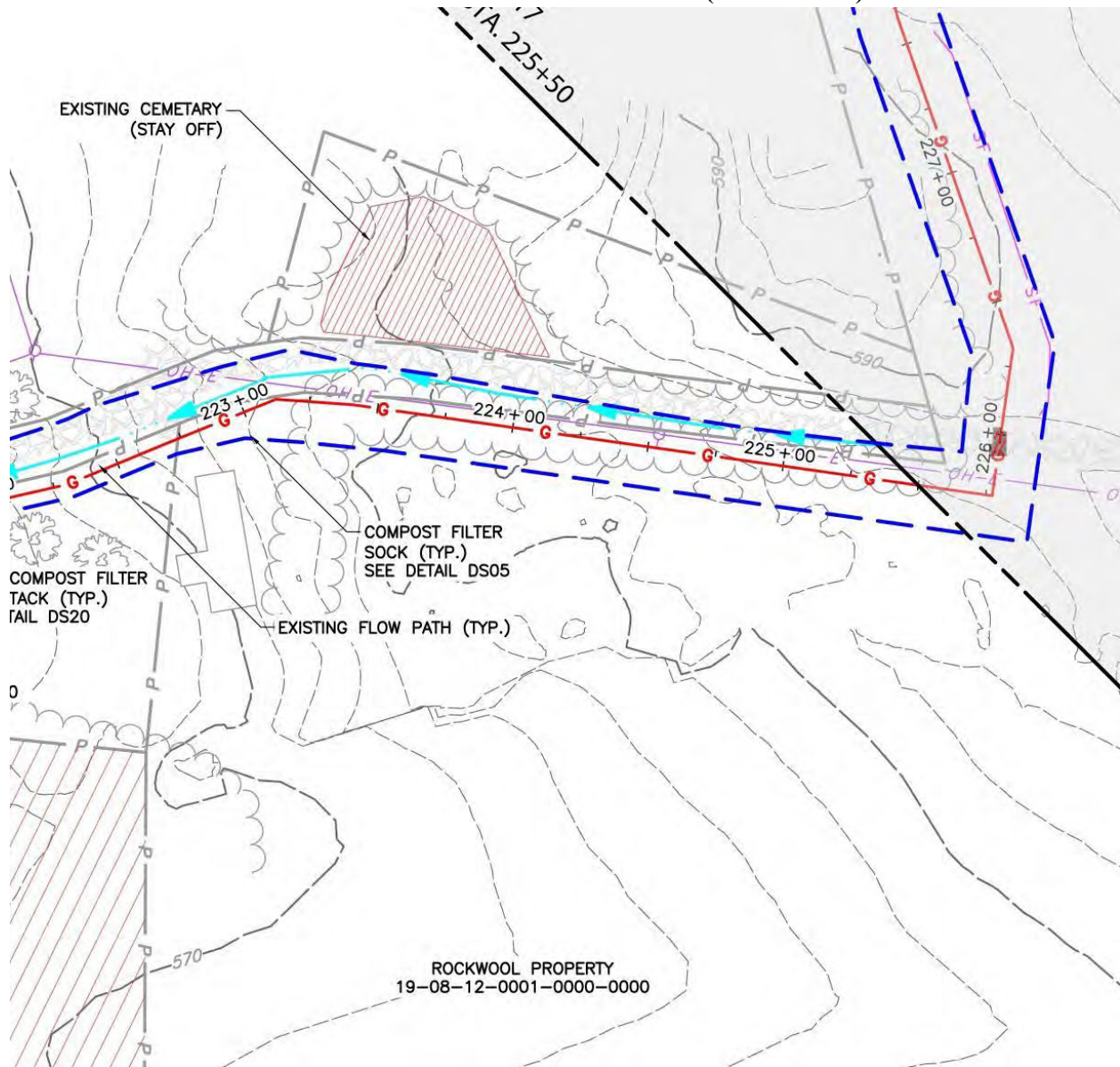


(b) (6) Privacy, (b) (7)(C) Enforcement Privacy


IDX Image Jefferson

(b) (6) Privacy. (b) (7)(C) Confidentiality

**EXHIBIT LL - MOUNTAINEER GAS' MAPS SHOWING INCORRECT BOUNDARIES  
AND SIZE FOR THE CEMETERY (CLOSE UP)**



**EXHIBIT MM - WV DEPARTMENT OF TRANSPORTATION, DIVISION OF  
HIGHWAYS, GUIDANCE MEMO ON OIL AND GAS PIPELINE CROSSINGS  
OCT. 1, 2018**


  
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
**Division of Highways**  
1900 Kanawha Boulevard East • Building Five • Room 110  
Charleston, West Virginia 25305-0430 • (304) 558-3505

Thomas J. Smith, P. E.  
Secretary of Transportation/  
Commissioner of Highways

October 1, 2018

MEMORANDUM

TO: ALL DISTRICT ENGINEERS/MANAGERS

FROM: THOMAS J. SMITH, P. E.  
SECRETARY OF TRANSPORTATION/  
COMMISSIONER OF HIGHWAYS 

SUBJECT: OIL AND GAS PIPELINE CROSSING REQUIREMENTS

This memo will provide additional guidance for preparation of permit requests to construct facilities for pipelines that carry natural gas, petroleum products or other similar materials produced and carried through pipelines, along with the requirements found in the latest edition of the *ACCOMMODATION OF UTILITIES ON HIGHWAY RIGHT OF WAY AND ADJUSTMENT AND RELOCATION OF UTILITY FACILITIES ON HIGHWAY PROJECTS MANUAL*. In any instance where discrepancies exist between this guidance and the manual, these guidelines shall prevail.

A. CONTROLLED/LIMITED ACCESS (CA) HIGHWAYS

1. GENERAL

CA highways include interstates, APD, (Appalachian Development Highway System routes) and any other sections of highway that use fence lines as a means to mark Division of Highways (DOH) Right of Way and to control or limit access. Longitudinal pipeline installations are not permitted within the DOH Right of Way. Coring requests, access to work areas from the travel lane or shoulder, parking, equipment loading or unloading, or material loading and unloading will not be permitted from any travel lane or shoulder of the roadway. No interference with the traveling public shall be permitted. If an unexpected circumstance creates the need for traffic control, then the proper case from the latest edition of

E.E.O./AFFIRMATIVE ACTION EMPLOYER

# EXHIBIT MM - WV DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, GUIDANCE MEMO ON OIL AND GAS PIPELINE CROSSINGS OCT. 1, 2018

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS  
October 1, 2018  
PAGE 4

Coordination will be required with emergency services, county school systems, local law enforcement, and news media on closure times or expected delays due to construction or detours.

## C. CASING

### 1. GENERAL

It is recognized that a definite policy on the encasement of pipelines must take into account many inconclusive variables, not the least of which is the progressive improvements being made in the pipeline industry for strengthening and protecting carrier pipes. An arbitrary policy of requiring casing for all highway crossings is too expensive for both the utility consumer and the highway user. As an alternative to casing, the Operator or the Operator's contractor may increase the minimum depth of cover in lieu of placing casing, if proper stress calculations are performed. However, if the Operator or Operator's contractor wishes to use this method, they must first obtain approval from the DOH for each location this method is to be used. Casing will only be required in certain locations that the District Engineer/Manager determines are required to maintain the safety of the traveling public.

### 2. CASED CROSSING DESIGN

For cased road crossings, the calculated wall thickness required for the maximum allowable operating pressure shall be determined using the following:

Liquid Pipeline - 0.72 Design Factor  
Class 1 (Gas) - 0.72 Design Factor  
Class 2 (Gas) - 0.60 Design Factor  
Class 3 (Gas) - 0.50 Design Factor  
Class 4 (Gas) - 0.40 Design Factor

The wall thickness shall meet or exceed the Title 49 CFR 192.193 and 195 current requirements for road crossings. DOH will require one class higher than the calculated required thickness for all major road crossings.

### 3. UNCASED CROSSING DESIGN

For uncased road crossings, the calculated wall thickness required for the maximum allowable operating pressure shall be determined using the following:

Liquid Pipeline - 0.50 Design Factor  
Class 1, 2, 3 (Gas) - 0.50 Design Factor  
Class 4 (Gas) - 0.40 Design Factor

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS  
October 1, 2018  
PAGE 5

The wall thickness shall meet or exceed the Title 49 CFR 192, 193 and 195 current requirements for road crossings. DOH will require one class higher than the calculated required thickness for all major road crossings.

## D. PERMIT APPLICATION SUBMITTAL

### 1. GENERAL

An individual crossing permit shall be required for each location at which the pipeline crosses the State Highway Right of Way. The permit for the crossing may include accesses from the State Highway Right of Way on each side of the road within the crossing's limits, only within non-CA right of way areas.

### 2. PERMIT APPLICATION FORMS

The Oil & Gas Information Data Sheet will contain all information needed for DOH personnel to initiate a new permit in the database. It must include contact personnel for permit questions and for personnel in charge of field construction. All necessary hauling route information will also be included on the Data Sheet.

### 3. SITE PHOTOS

Photos in the four directions of each entrance/crossing should be included with the submittal. These need to be captioned and have a recognizable land mark shown or referenced in the photo. The proposed site needs to be staked before submitting the permit application.

### 4. MAP

A site-specific map showing the location of the proposed project should include the hauling routes used. The DOH prefers a portion of the latest County Maps be used for this. When the pipeline crossing is a part of a larger pipeline project with multiple crossing and accesses, it is recommended to provide an overview map showing the centerline of the entire project on the County Maps. This is helpful for the District personnel to plan site and route reviews more efficiently in order to minimize the time needed to approve the permit.

### 5. PROPOSED PLANS

Plan, profile and cross-sectional views of proposed plans are to be included with each application showing depth of cover and original ground slopes for both sides of the roadway extending at least to the Right of way limits. No access or break of controlled access will be permitted from within the roadway right of way.

MEMORANDUM – PIPELINE CROSSING REQUIREMENTS  
October 1, 2018  
PAGE 6

When the cut or fill slope is steeper than 2:1, a slope stabilization plan shall be included in the plan submittal.

## 6. PIPE CALCULATIONS

High pressure pipelines with an operating pressure over 150 psi will be considered individually to determine if they will present a danger to the traveling public. The pipe thickness under the roadway shall be increased 1 class above the calculated required thickness. The pipe wall thickness under the roadway shall be as calculated in C.2 or C.3 above. The application for permits for these lines shall include the operating pressure, the maximum allowable operating pressure and safety calculations signed by a WV licensed Professional Engineer which shall comply with the Title 49 Code of Federal Regulations Part 192.

## 7. METHOD OF REPAIR

The submitted application shall include a general plan for repair or replacement of this pipeline crossing structure, in case of a leak or defect.

## 8. TRAFFIC CONTROL PLAN

If traffic control is required, then the proper case from the latest edition of the *MANUAL ON TEMPORARY TRAFFIC CONTROL FOR STREETS AND HIGHWAYS* shall be used, and included with the original application. If an open cut is approved by the District Engineer/Manager, a traffic control plan specifically for an open cut will be included. As a general rule, the DOH would prefer not to detour traffic at a pipe crossing, unless absolutely necessary. Any detour routes used by the Operator will be maintained by the Operator.

## E. INSPECTION

The DOH will make every effort to provide proper inspection of the pipeline crossing work with in-house workforce. The Contractor will provide the DOH with as-built notes, plans, or other documentation that verifies the pipeline was constructed at the proper location and grade, unless directed otherwise.

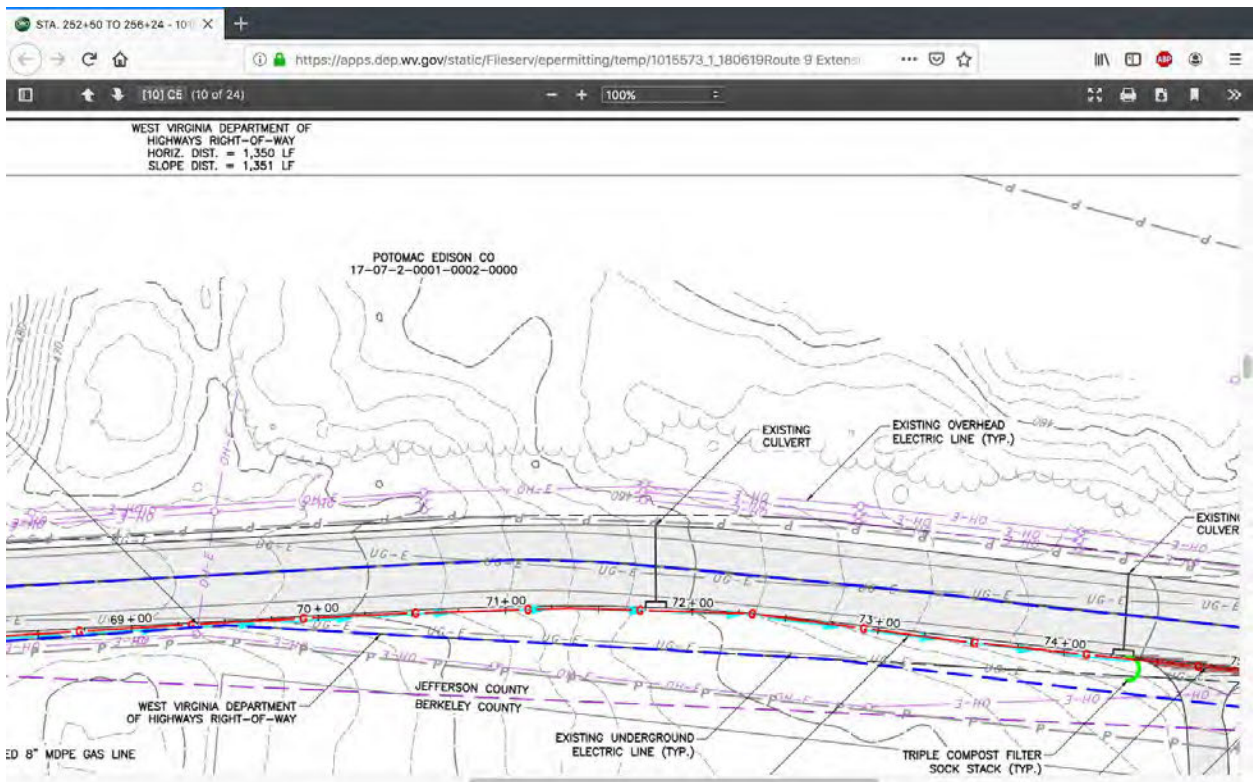
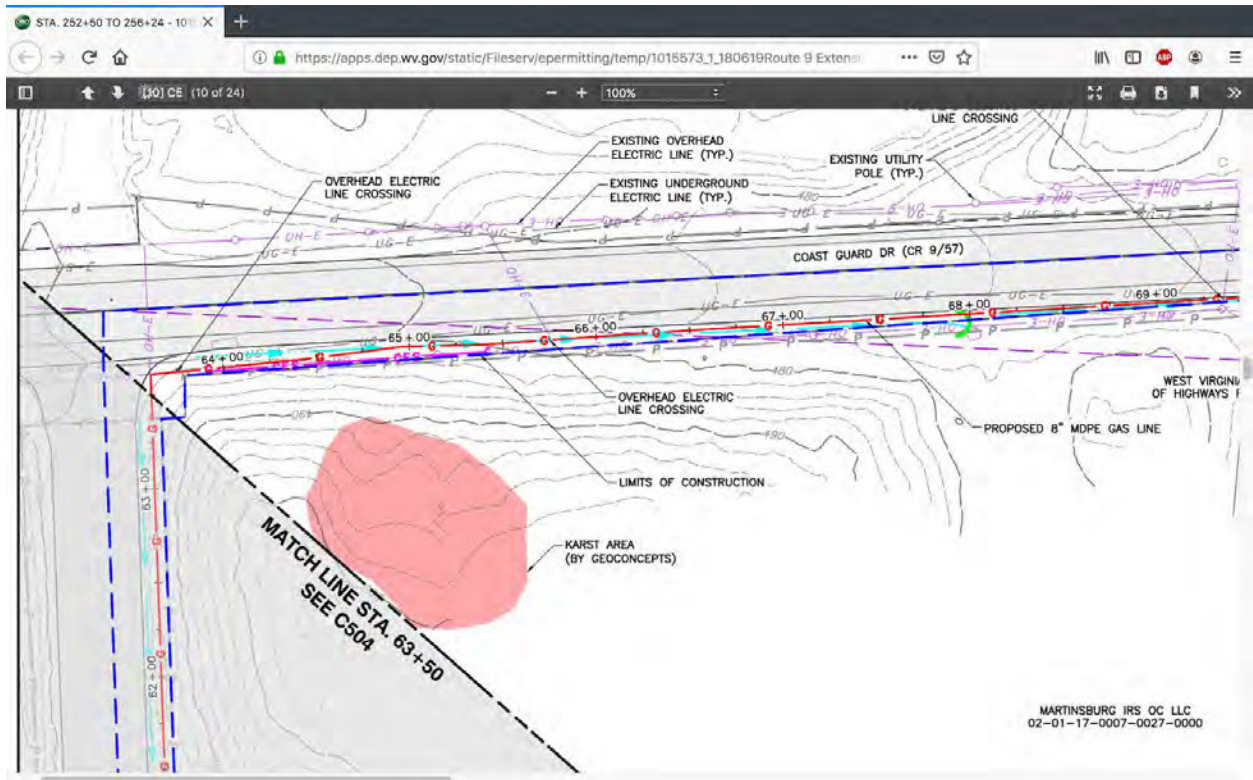
MEMORANDUM – PIPELINE CROSSING REQUIREMENTS  
October 1, 2018  
PAGE 7

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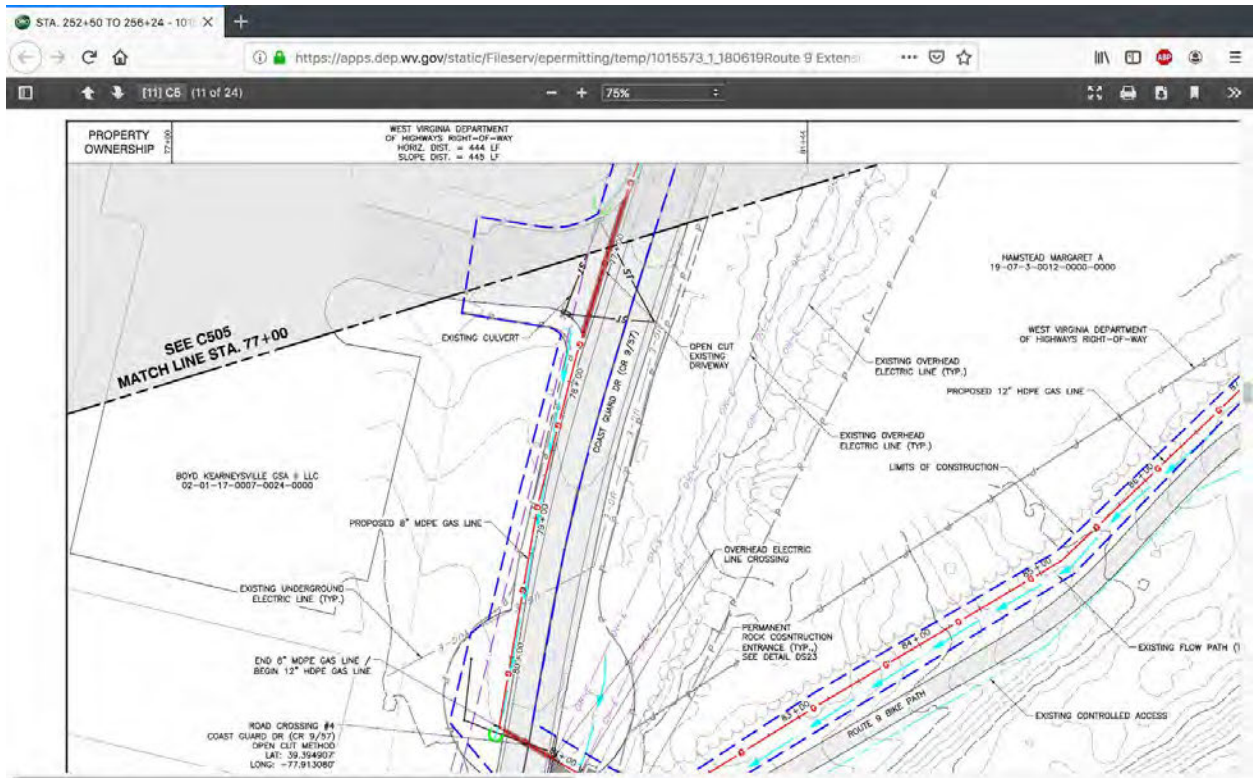
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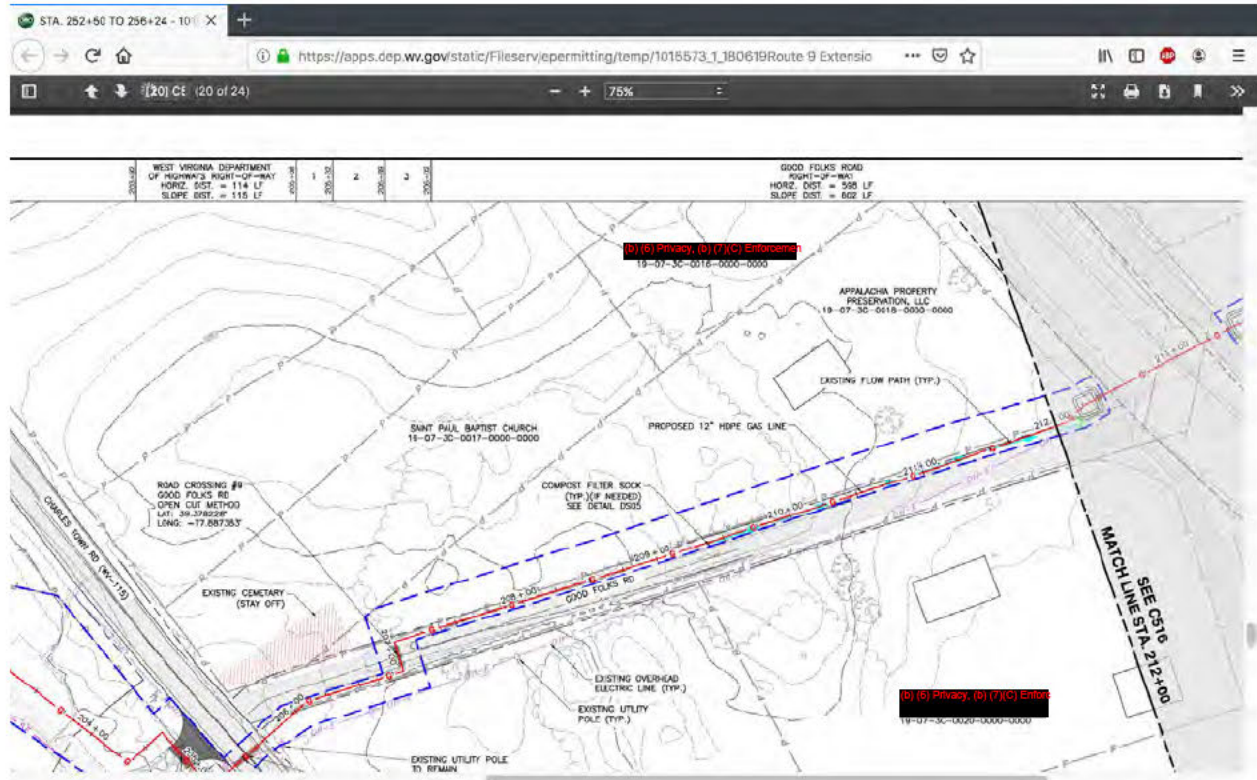
# EXHIBIT NN - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG COAST GUARD DRIVE



# EXHIBIT NN - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG COAST GUARD DRIVE



# EXHIBIT OO - LONGITUDINAL INSTALLATION OF MOUNTAINEER GAS PIPELINE IN THE DOH ROW ALONG GOOD FOLKS ROAD



## EXHIBIT PP - PUBLIC NOTICE NO. SM-4-2019

State of West Virginia  
Department of Environmental Protection  
Division of Water and Waste Management  
**PUBLIC NOTICE and PUBLIC HEARING**

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S, PUBLIC INFORMATION OFFICE, 601 57TH STREET SE, CHARLESTON, WEST VIRGINIA 25304-2345 TELEPHONE: (304) 926-0440.

APPLICATION FOR COVERAGE UNDER THE GENERAL WEST VIRGINIA WATER POLLUTION CONTROL PERMIT NO. WV0116815

Public Notice No.: SM-4-2019      Public Notice Date: January 25, 2019

Paper: The Journal

The following has applied for coverage under the General WV/Water Pollution Control Permit No. WV0116815 for this facility or activity:

Appl. No.: WVR311281

Applicant: MOUNTAINEER GAS COMPANY  
414 SUMMERS ST  
CHARLESTON, WV 25301

Location: Near KEARNEYSVILLE, BERKELEY COUNTY

Latitude: 39° 23' 40.1172"      Longitude: 77° 53' 59.6034"

Receiving Stream:  
Shaw Run/Evans Run/Opasquin Creek/Potomac River

Activity:  
The proposed Route 9 Extension Pipeline Project (Project) will disturb 32.64 acres and consists of the installation of approximately 4.93 miles natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia, and involves construction of approximately 4.93 miles of natural gas distribution line. The project includes access roads, 17.69 acres entirely within the Department of Highways Right-of-way and 14.95 acres of private Right-of-way (ROW).

Business conducted:  
Route 9 Extension

Implementation:  
N/A

On the basis of review of the application the "Water Pollution Control Act (Chapter 22, Article 11-6(a)), and the "West Virginia Legislative Rules," the State of West Virginia will act on the above application.

Any interested person may submit written comments on the site registration permit application by addressing such to the Director of the Division of Water and Waste Management within 30 days of the date of the public notice. Such comments or requests should be addressed to:

Director, Division of Water and Management, DEP  
ATTN: Sharon Mullins, Permitting Section  
601 57th Street SE  
Charleston, WV 25304-2345

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The public comment period begins January 25, 2019 and ends February 25, 2019. A public hearing has been scheduled from 6 to 8 p.m. on Thursday, February 21, 2019 at:

Ranson Civic Center  
431 W. 2nd Ave.  
Ranson, WV 25418

The purpose of the hearing is to take comments on the draft permit that will cover the discharge of stormwater during construction activities.

Oral and written comments will be accepted at the hearing. After the public hearing, the comment period will continue until 8 p.m. on Friday, February 25, 2019.

A copy of the draft permit can be obtained by calling Sharon Mullins, Division of Water & Waste Management, (304) 926-0499, ext. 1132; or e-mail her at [Sharon.A.Mullins@WV.Gov](mailto:Sharon.A.Mullins@WV.Gov).

Comments received within this period will be considered prior to acting on the permit application. Correspondence should include the name, address and the telephone number of the writer and a concise statement of the nature of the issues raised. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the site registration permit application and this facility's coverage under the General Permit. Interested persons may contact the Public Information Office to obtain further information.

The application may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 8:00 a.m. and 4:00 p.m. on business days. Copies of the application and the General Permit and Fact Sheet may be obtained from the Division at a nominal cost. Individuals requiring Telecommunication Device (TDD) may contact our agency by calling (304) 926-0493. Calls must be made 8:30 a.m. to 3:30 p.m. Monday through Friday.

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**EXHIBIT QQ - PUBLIC NOTICE AS IT APPEARED IN THE MARTINSBURG JOURNAL LEGAL ADS, JAN. 25, 2019**

<p>State of West Virginia Department of Environmental Protection Division of Water and Waste Management</p> <p><b>PUBLIC NOTICE and PUBLIC HEARING</b></p> <p>WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S PUBLIC INFORMATION OFFICE, 601 57TH STREET SE, CHARLESTON, WEST VIRGINIA 25304-2345 TELEPHONE: (304) 926-0440.</p> <p>APPLICATION FOR COVERAGE UNDER THE GENERAL WEST VIRGINIA WATER POLLUTION CONTROL PERMIT NO. WV0116815</p> <p>Public Notice No.: SM-4-2019</p> <p>Public Notice Date: January 25, 2019</p>	<p>110 Legal/ Public Notices</p> <p>Paper: The Journal</p> <p>The following has applied for coverage under the General WV/Water Pollution Control Permit No. WV0116815 for this facility or activity:</p> <p>Appl. No.: WVR011261</p> <p>Applicant: MOUNTAINEER GAS COMPANY 414 SUMMERS ST CHARLESTON, WV 25301</p> <p>Location: Near KEARNEYSVILLE, BERKELEY COUNTY</p> <p>Latitude: 39° 23' 40.1172"</p> <p>Longitude: 77° 53' 59.6034"</p> <p>Receiving Stream: Shaw Run/ Evans Run/ Opequon Creek/ Potomac River</p> <p>Activity: The proposed Route 9 Extension Pipeline Project (Project) will disturb 32.64 acres and consists of the installation of approximately 4.93 miles natural gas distribution pipeline in Berkeley and Jefferson Counties, West Virginia, and involves construction of approximately 4.93 miles of natural gas distribution line.</p> <p>The project includes access roads, 17.69 acres entirely within the Department of Highways Right-of-way and 14.95 acres of private Right-of-way (ROW).</p> <p>Business conducted: Route 9 Extension</p> <p>Implementation: N/A</p> <p>On the basis of review of the application the "Water Pollution Control Act (Chapter 22, Article 11-8(a))," and the "West Virginia Legislative Rules," the State of West Virginia will act on the above application.</p>	<p>The public comment period begins January 25, 2019 and ends February 25, 2019. A public hearing has been scheduled from 6 to 8 p.m. on Thursday, February 21, 2019 at</p> <p>Ranson Civic Center 431 W. 2nd Ave. Ranson, WV 25438</p> <p>The purpose of the hearing is to take comments on the draft permit that will cover the discharge of stormwater during construction activities.</p> <p>Oral and written comments will be accepted at the hearing. After the public hearing, the comment period will continue until 8 p.m. on Friday, February 25, 2019.</p> <p>A copy of the draft permit can be obtained by calling Sharon Mullins, Division of Water &amp; Waste Management, (304) 926-0469, ext. 1132; or email her at Sharon.A.Mullins@WV.gov.</p> <p>Comments received within this period will be considered prior to acting on the permit application. Correspondence should include the name, address and the telephone number of the writer and a concise statement of the nature of the issues raised. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the site registration permit application and this facility's coverage under the General Permit. Interested persons may contact the Public Information Office to obtain further information.</p> <p>The application may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 8:00 a.m. and 4:00 p.m. on business days.</p> <p>Copies of the application and the General Permit and Fact Sheet may be obtained from the Division at a nominal cost. Individuals requiring Telecommunication Device (TDD) may contact our agency by calling (304) 926-0493. Calls must be made 8:30 a.m. to 5:30 p.m. Monday through Friday.</p>
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## EXHIBIT RR - WVDEP ELECTRONIC SUBMISSION SYSTEM APPLICATION UPLOAD LOGS FOR THE MOUNTAINEER PERMIT<sup>38</sup>

[https://apps.dep.wv.gov/webapp/\\_dep/securearea/Application/Templates/Objects/obj/AttachmentsList.cfm?ModuleSeq=0&SecType=index&application\\_id=574619](https://apps.dep.wv.gov/webapp/_dep/securearea/Application/Templates/Objects/obj/AttachmentsList.cfm?ModuleSeq=0&SecType=index&application_id=574619)



**Applicant:** MOUNTAINEER GAS COMPANY  
**Facility:** Route 9 Extension (10/31/2016)

**Type:** New NPDES/State Storm Water Construction #1  
**Permit:** WVR311281

Application Attachments

Close

Section	Description	File name	Uploaded Date	Version	User	CRIP?
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	Project Reduction Narrative	Route 9-Change narrative.pdf	13/29/2019 10:07 AM	0	RizoE50	
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	LOD, Centerline, and Station CADD file	Route 9 Extension Project-WGS 84.zip	13/29/2019 10:04 AM	0	RizoE50	
Sections 9 - 11: Description of Project, Estimates, and Cubic Yards	LOD, Centerline, and Station File	Route 9 Extension Project.zip	13/29/2019 10:03 AM	0	RizoE50	
Information: Supplemental Information	Chesapeake Addendum	Chesapeake Addendum.pdf	12/15/2019 04:45 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	SWPPP	180619_SWPPP.pdf	12/15/2019 04:30 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix B	Appendix B_20190215_1206191200_38_Soil_Report.pdf	12/15/2019 04:29 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Erosion/Sediment	180619 Route 9 Extension NPDES Plan Set.pdf	12/15/2019 04:05 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Management	MGO EGD DETAIL 6.pdf	12/16/2019 04:04 PM	1	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix D	180-619-GPP-Appendix D.pdf	12/16/2019 04:03 PM	1	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Details	MGO EGD DETAIL 6.pdf	12/16/2019 04:01 PM	1	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Controls	Attachment 13.pdf	12/16/2019 04:01 PM	1	RizoE50	
Sections 5 - 8: Site Information	TOPO Map	Appendix A_180619_0001 FIG1 USGS SITE.pdf	12/16/2019 03:56 PM	1	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Sinkhole repair plan	Sinkhole Repair Procedure.pdf	11/17/2019 10:53 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SHEET 13 OF 33	180-619 Route 9 SHEET 13_20190117.pdf	11/17/2019 10:49 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Section 2.1	Section 2.1-2.2.pdf	11/17/2019 10:34 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SWPPP Section 4.4	Section 4.4.pdf	11/17/2019 10:34 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Section 4.1	Section 4.1.pdf	11/17/2019 10:33 AM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	SWPPP Section 2.2	Section 2.1-2.2.pdf	11/17/2019 10:32 AM	0	RizoE50	
Form: Statement For Billing, Class 1	Statement For Billing	201901161819648798.pdf	11/16/2019 04:57 PM	0	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix F	180619_route 9 ext_Installation_Exhibit.pdf	12/07/2018 05:33 PM	0	RizoE50	
Sections 15 - 17: Site Maps and Storm Water Management	Appendix E	Mountaineer Gas RIExt Survey.pdf	12/07/2018 05:25 PM	0	RizoE50	
Sections 12 - 14: Relative Time Line, Sediment Controls, and Sequence	Sequence	Attachment 14.pdf	12/07/2018 03:00 PM	0	RizoE50	
Certification: Signature Page	Certification Signature Page	DEP_Cert_sign.pdf	12/07/2018 02:00 PM	0	RizoE50	
Section 18: Public Notice Sign	Public Notice Sign	180619 - Public_Notice Sign-Figure No.1.pdf	12/07/2018 11:05 AM	0	RizoE50	

<sup>38</sup> RizoE50 is an employee of Civil & Environmental Consultants, Inc., the consulting firm used by Mountaineer Gas Company to prepare the Oil & Gas Construction Stormwater Permit Application. He is Mountaineer's designated user of the ESS system for this permitting action.

## EXHIBIT SS - WVDEP LETTER GRANTING MOUNTAINEER REGISTRATION UNDER THE GENERAL PERMIT, MARCH 29, 2019

wvdeq.org	wvdeq.org
 west virginia department of environmental protection Division of Water and Waste Management 601 57th Street SE Charleston West Virginia 25304-2345 Phone: (304) 926-0495 Fax: (304) 926-0463	Austin Capenno, Cabinet Secretary dep@wv.gov
March 29, 2019	
MOUNTAINEER GAS COMPANY Fred Robinson 434 SUMMITERS ST Charleston, WV 25301	Re: General Permit Registration No. WVDR11312, Berkeley Co. Route 9 Extension (1001/2018) Acres Permitted to be Disturbed (25.38)
Dear Permittee:	
You are now authorized to operate under General Permit No. WVDR116815 to discharge stormwater associated with Oil and Gas related construction activities. This registration form should be kept with your copy of the General Permit. You should carefully read the contents of the permit and become familiar with all requirements needed to remain in compliance.	
Although you should be aware of all the terms and conditions of this permit, we wish to advise you of the following important requirements:	
<ol style="list-style-type: none"><li>1. In accordance with Section G.4 of the General Permit, you have developed a complete storm water pollution prevention plan. This plan is to be retained on site and be available for review by the Director or the Director's authorized representative as of the date of your coverage by the General Permit, which is the date of this letter.</li><li>2. The erosion control measures approved by this Agency for this project shall be maintained in proper condition to individually and collectively perform the functions for which they were designed. In order to ensure the efficiency and proper maintenance of these measures, the permittee shall make sufficiently frequent, periodic inspections to detect any impairment of the designed stability, capacity or environmental requirements of the approved measures. The permittee shall take immediate steps to correct any such impairment found to exist.</li><li>3. If this Stormwater Pollution Prevention Plan (SWPPP) proves to be ineffective in controlling erosion and the sediment in storm water discharges associated with industrial/construction activities, or site conditions change, the Permittee shall amend the SWPPP and install appropriate sediment and/or control devices in accordance with Section G.4.c. of this permit and the application instructions.</li></ol>	
Promoting a healthy environment.	
78	
<p>4. The current General Permit expires on March 31, 2024. If you wish to continue an activity authorized by this permit after the expiration date of the permit, provisions for coverage will be made during the public notice process for any new General Permit to be issued at that time.</p> <p>5. Final stabilization means disturbed areas shall be covered by the appropriate permanent protection. Final stabilization includes: pavement; buildings; stable waterways (riprap, concrete, grass or pipe); a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground; stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse; and any other approved structure or material.</p> <p>You will be invoiced for your annual permit fees one month prior to the anniversary date of today's date. Failure to submit the annual fee within 90 days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect. Please be advised that a pro-rated annual permit fee may be assessed upon the completion date and proper stabilization.</p> <p>Issuance of this registration does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state or local law or rules.</p> <p>The validity of this General Permit Registration is contingent upon payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.</p> <p>Issuance of this registration does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state or local law or rules.</p> <p>Your efforts toward preventing the degradation of our natural resources are greatly appreciated. If you have any questions, please contact Rick Adams at (304) 926-0499 Ext. 1354 or by email at <a href="mailto:rick.adams@wv.gov">rick.adams@wv.gov</a>.</p> <p>Harold D. Ward Acting Director WV DEP-Division of Water &amp; Waste Mgt. 601 57th St SE Charleston, WV 25304-2345 Phone: (304) 926-0495 Fax: (304) 926-0463</p>	



**EXHIBIT TT - CONSTRUCTION FENCE INSTALLATION**





**EXHIBIT UU - TREE REMOVED FROM THE CEMETERY**





**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS  
PIPELINE CONSTRUCTION**





**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS  
PIPELINE CONSTRUCTION**



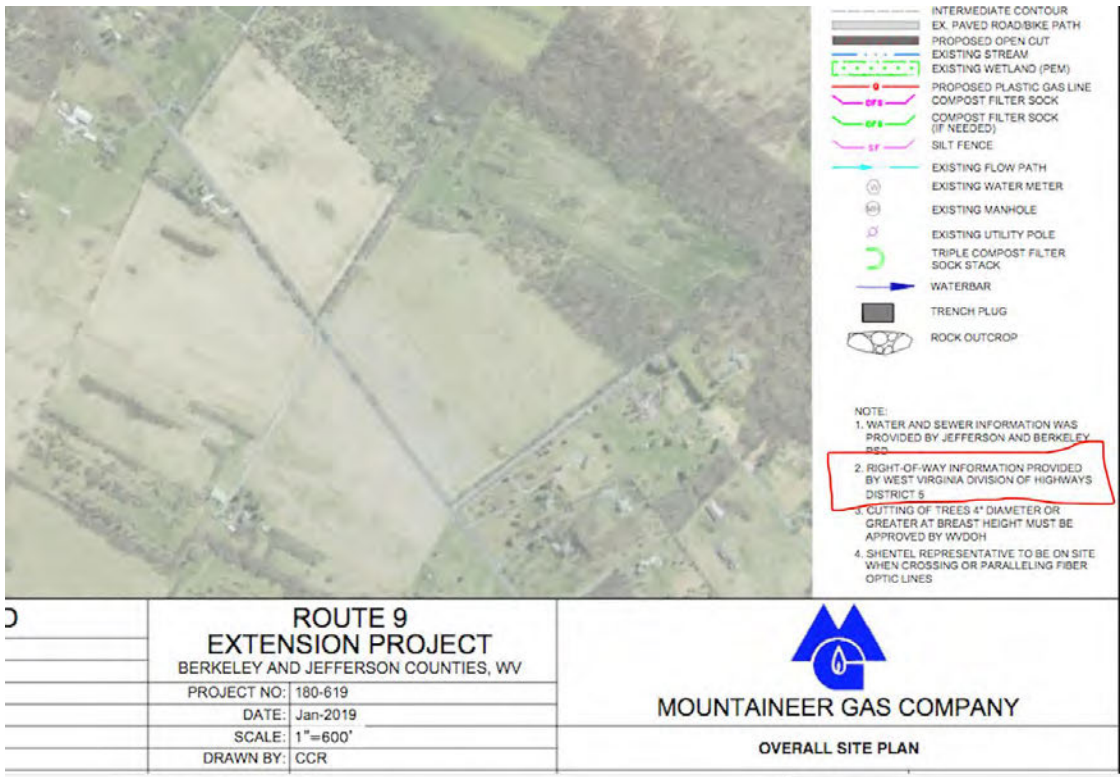


**EXHIBIT VV - ACCESS TO CEMETERY BLOCKED BY MOUNTAINEER GAS  
PIPELINE CONSTRUCTION**



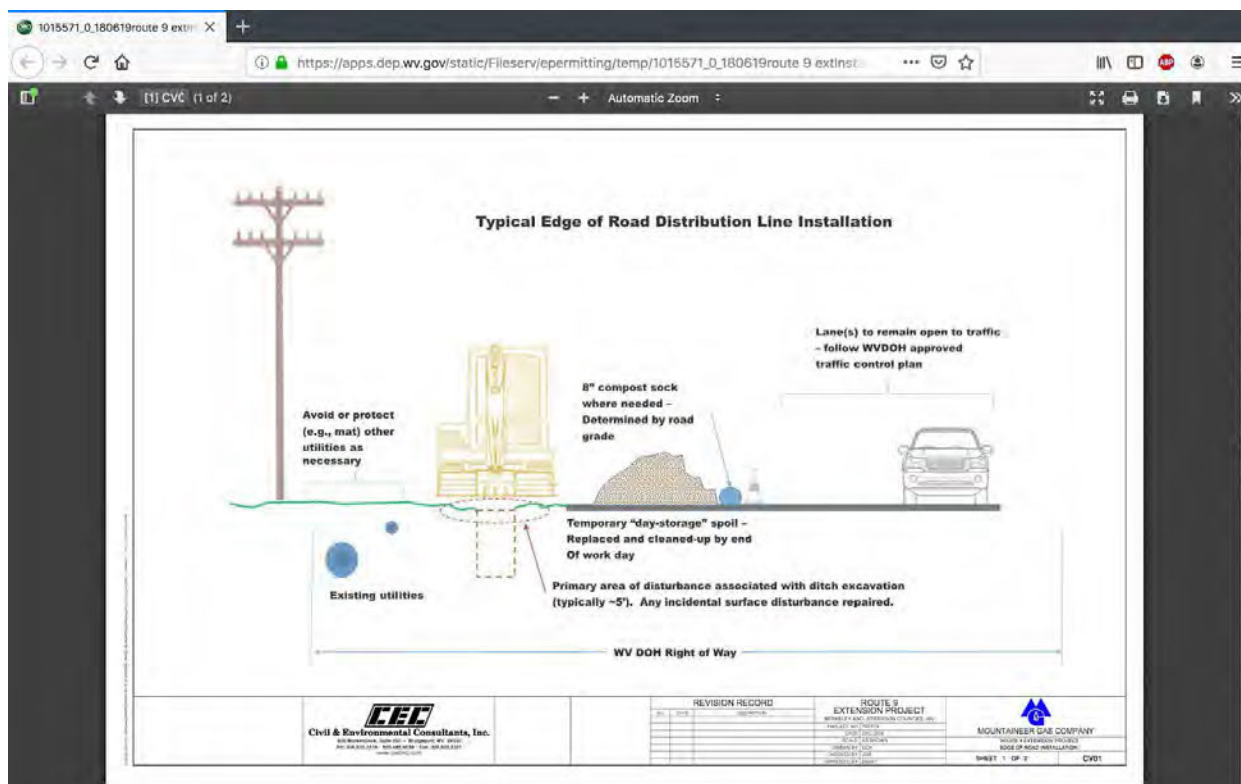


EXHIBIT WW - MOUNTAINEER GAS SITE MAP LEGEND



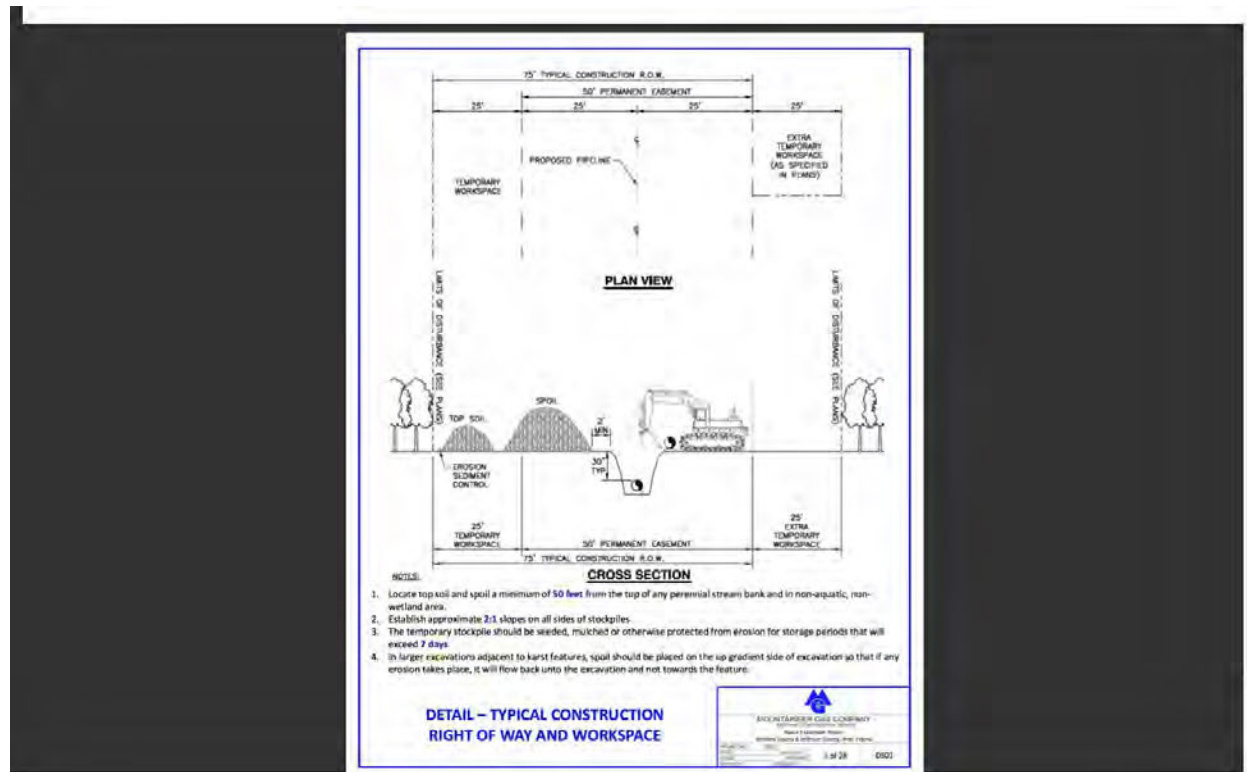
**EXHIBIT XX - CONSTRUCTION METHOD FOR EDGE OF ROAD (LONGITUDINAL)  
PIPELINE INSTALLATIONS**

**[THIS FIGURE WAS PULLED FROM THE 1/18/2019 WVDEP APPLICATION ON  
2/14/2019 AND THE SECOND FIGURE SUBSTITUTED, REMOVING ANY HINT OF  
CARS OR TELEPHONE POLES...]**

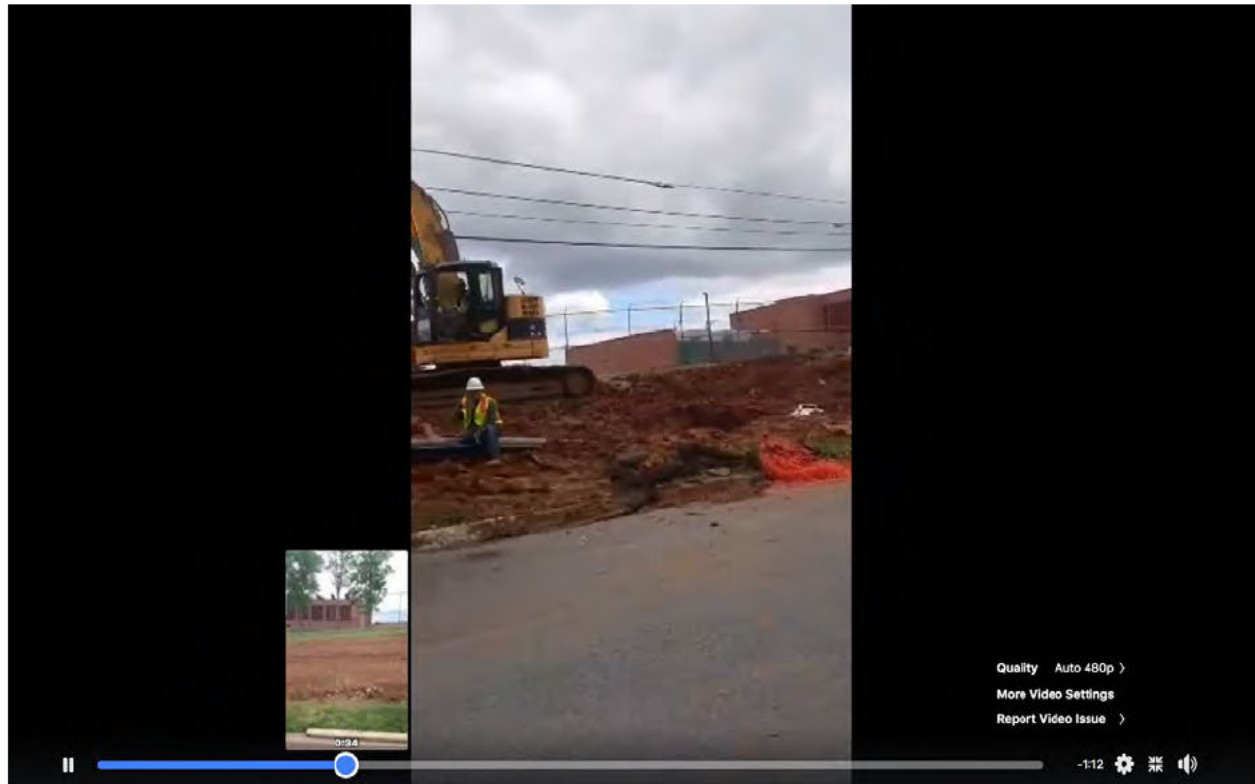


## EXHIBIT XX - CONSTRUCTION METHOD FOR EDGE OF ROAD (LONGITUDINAL) PIPELINE INSTALLATIONS

[THIS FIGURE WAS PULLED FROM THE 1/18/2019 WVDEP APPLICATION ON  
2/14/2019 AND THE SECOND FIGURE SUBSTITUTED, REMOVING ANY HINT OF  
CARS OR TELEPHONE POLES...]



**EXHIBIT YY - MOUNTAINEER GAS PIPELINE BEING INSTALLED<sup>39</sup> IN DOH  
RIGHT OF WAY (ROAD EDGE--LONGITUDINAL METHOD)  
ALONG COAST GUARD DRIVE  
MAY 14, 2019**



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<sup>39</sup> Courtesy of Eastern Panhandle Protectors; full video:  
[https://www.facebook.com/easternpanhandleprotectors/videos/433060534174174/?epa=SEARCH\\_BOX](https://www.facebook.com/easternpanhandleprotectors/videos/433060534174174/?epa=SEARCH_BOX)



**EXHIBIT ZZ - MOUNTAINEER BLOCKING ACCESS TO ROUTE 9 BIKE PATH<sup>40</sup>**  
**MAY 20, 2019**

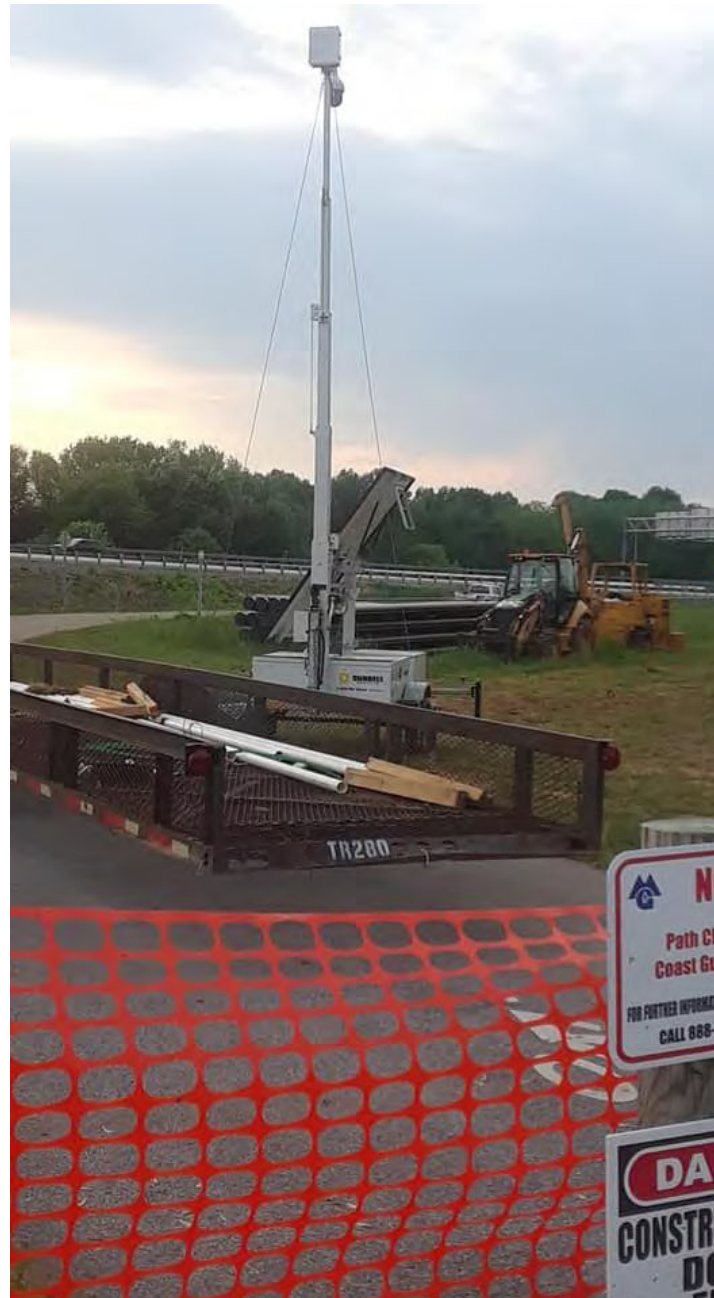


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<sup>40</sup> Notice the lack of a WVDEP-required Construction Stormwater Permit Public Notice Sign.

**EXHIBIT AAA - MOUNTAINEER TRENCHING EQUIPMENT AND PIPE LAYDOWN  
MAY 20, 2019**

NOTE: THE EQUIPMENT IS NOT ONLY ON THE BIKE PATH, BUT AT THIS POINT THE BIKE PATH ITSELF CROSSES INTO THE ROW OF THE LIMITED ACCESS HIGHWAY (ROUTE 9)



## EXHIBIT BBB - JCHLC 06/18/2019 MEETING MINUTES, PAGE 2

motion which passed unanimously. A vote relating to the final budget will occur at the August meeting, once the Commission knows about the Fairs & Festivals grant and FY-19 carryover.

**Resolution for Deed of Conservation Easement:** The easement is known as the (b) (6) Privacy, (b) (7)(C) Enfr. Mrs. Creamer moved to authorize Mr. Burke to sign the easement. Mr. Koonce seconded the motion, which passed unanimously.

**Court House Committee:** Mr. Koonce reported the committee hadn't met recently. He did ask that the JCHLC request the County Commission appoint someone from the JCHLC or historic preservation community to the newly forming Facilities Committee which is charged with deciding how to rework the first of block of Washington Street.

**AmeriCorps Report:** (b) (6) Privacy, (b) (7)(C) Enfr. updated the JCHLC about the social media accounts the Commission maintains. She noted Instagram is doing well and Facebook has remained stable. She has also been working on Middleway design standards and noted someone will need to be at the JCHLC table at Middleway Day. Mrs. Creamer and Mr. Koonce indicated they will both be there all day for other efforts and can help out when needed.

**Status of National Register Nominations:** (b) (6) Privacy, (b) (7)(C) Enfr. was absent but sent a report. The nomination for (b) (6) Privacy, (b) (7)(C) Enfr. farm is awaiting review by the state. The nomination for (b) (6) Privacy, (b) (7)(C) Enfr. is halfway complete.

**Status of Zoning and Section 106 Reviews:** Mr. Burke reported the site plan for Rocky Ridge development will be voted on at the July Planning Commission meeting. Rocky Ridge house is right next to the proposed development. The house is eligible for the National Register but isn't yet on the County register. Mr. Burke believes increased vegetation will shield the house from the development site. Mr. Horter is preparing a letter to the Planning Commission and developer to that effect. No report on Rt. 340.

**Status of Duffields Depot:** No changes at present. The JCHLC is waiting on additional funding to continue work. Four windows were donated. The current plan is to brick up one of the entrances, thus returning the building to its 1839 appearance.

**Commissioner Comments:** Mr. Koonce raised concern about the African American graveyard in Kearneysville that is adjacent to both Rockwool and pipeline construction. Mr. Burke confirmed there is nothing the JCHLC can do, but suggested (b) (6) Privacy, (b) (7)(C) Enforcement be contacted for assistance in gravestone preservation. Mr. Koonce also reported (b) (6) Privacy, (b) (7)(C) Enfr. from the Preservation Alliance of West Virginia will be giving a presentation in August in Shepherdstown about historic movie houses in WV.

Mrs. Creamer moved to adjourn the meeting at 8:14 pm. Mr. Koonce seconded the motion which passed unanimously.

Respectfully submitted,

/s/

H.S. Leigh Koonce, Secretary  
Jefferson County Historic Landmarks Commission



## EXHIBIT CCC - JCHLC 08/08/18 MEETING MINUTES, PAGE 3

Preservation to fund a topographical survey at Duffields. Horter noted that there are some new railroad grants because of the anniversary of the golden spike and the transcontinental railroad, but he was not certain B&O depots would be eligible. Kelly is also working on moving (b) (5) Privacy, (b) (7)(C) Enforcement Civil War driving tours to a smaller, less expensive format. She is also working on new brochures for the Beeline March and the Morgan's Grove Historic District.

F. Status of NR nomination – *The Rocks* – Kelly

Kelly is still working on the nomination and will stay in touch with Jeff Smith at the WVSHPO from Texas.

G. Status of JC Courthouse becoming a NHL – Kelly

Kelly has not heard from Kathryn Smith at the NHL office since the beginning of July. She said to expect a response in 4-6 weeks and that she is hoping to give the commission some good direction as it pursues the nomination. Kelly expects to hear from her soon.

H. Status of (b) (5) Privacy, (b) (7)(C) Enforcement house demolition – Burke

This project is now in the contractor's hands. The contractor says he can get his equipment up the drive, but River Road keeps flooding.

I. Report on BZA appeal – Burke

The JCHLC voted to appeal the zoning administrator's decision that section 4.4C of the zoning ordinance was ambiguous and did not apply to the planned development at (b) (5) Privacy, (b) (7)(C) Enforcement Farm. The BZA meeting was Thursday, June 28. Jarred Adams was hired to be the JCHLC's attorney. Most of the attorneys Burke interviewed had a conflict of interest and were associated with either the developer or the lender. Adams filed the motion. The zoning administrator's statement could have been read to apply to all National Register structures, but during the meeting she said that this decision did not apply to all National Register sites. The JCHLC lost the appeal and at this point cannot go to the circuit court.

J. Status of (b) (5) Privacy Arboretum & Garden Plan – Burke

Burke met with Amanda Harmon, who is still working at (b) (5) Privacy, (b) (7)(C) Enforcement Farm, and is meeting with landscape architect (b) (5) Privacy, (b) (7)(C) Enforcement next week. They will not be presenting to the project to the landmarks commission until September or October.

K. Selection of new part-time AmeriCorps member – Burke

(b) (5) Privacy, (b) (7)(C) Enforcement will be taking over as the AmeriCorps member with the JCHLC. She will be part-time and shared with Main Street Martinsburg.

L. Rockwool

(b) (5) Privacy, (b) (7)(C) Enforcement a National Register property, shares a boundary with Jefferson Orchards, but that it will not share a boundary with the Rockwool plant. Burke wants to know if JCHLC would like to issue a resolution/letter stating its opposition to the construction of the factory, because of the visual and sound impacts on nearby historic resources. (b) (5) Privacy, (b) (7)(C) Enforcement responding to a question from Hefestay, explained that the county commission voted on a pilot agreement for Rockwool to lure them to Jefferson County. Once Rockwool chose Ranson instead of the county property, the county commission took no further part.

Koonce moved that a resolution be approved and signed at the next meeting. Horter seconded, and passed.



## EXHIBIT DDD - JCHLC 10/10/18 MEETING MINUTES, PAGE 1



### Jefferson County Historic Landmarks Commission October 10, 2018 Jefferson County Commission Meeting Room

Members present: Martin Burke, Chairman, H.S. Leigh Koonce, Jack Hefestay, Ben Horter, Tony Troxel.

Guests present: (b) (6) Privacy, (b) (7)(C) Enforcement Privacy Jim Surkamp, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and three others.

Mr. Burke called meeting to order at 7:04 pm

#### Public Comment:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke with regard to his opposition to Rockwool and requested the HLC weigh in regarding the smoke stacks that will be erected.

-Jim Surkamp spoke with regard to Rockwool and highlighted the proximity to the (b) (6) Privacy, (b) (7)(C) Enforcement Privacy property and the Greenback Raid.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy questioned the membership of the HLC and its publication of meeting minutes. She also spoke in opposition to Rockwool.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy spoke against the Rockwool project and highlighted the proximity of her family farm, (b) (6) Privacy, (b) (7)(C) Enforcement Privacy to the project.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy suggested the HLC membership, as County Commission appointed agents, are able to request any documents necessary to make an informed decision relating to their decision-making processes. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy also raised concerns about the Charles Town Presbyterian Church Cemetery and its relocation.

Mr. Burke responded to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy and indicated the property is within a municipal boundary and, thus, not under the jurisdiction of the HLC. Mr. Burke spoke with Seth Rivard, Charles Town City Planner, and Mr. Rivard indicated Charles Town is not taking a position relating to the cemetery.

Mr. Burke introduced Tony Troxel who was appointed by the County Commission to the vacancy created by the resignation of (b) (6) Privacy, (b) (7)(C) Enforcement Privacy

**August Minutes:** Mr. Horter moved to approve the minutes as presented. Mr. Hefestay seconded the motion which passed unanimously.

## EXHIBIT EEE - JCHLC COURTHOUSE COMMITTEE

f. Changed Appendix C, principal and conditional use table, for villages to allow some commercial uses, this is under the category of adaptive reuse

### C. JC Courthouse Committee – Koonce

The courthouse committee has not met since the last JCHLC meeting. Koonce noted that there was a leak due to a burst pipe about two weeks ago but there was no damage to any documents. He also noted that Steve Redding is the sitting judge until the election in May, and his staff can handle any small problems that arise. Burke noted that the final decision on the courthouse windows was to remove the exterior storms and replace them with magnetic interior storms and repair the wood windows. This will greatly improve the appearance of the courthouse.

### D. Status of projects at (b) (5) Privacy, (b) (7)(C) Farm – Burke

The JCHLC just paid to have the stairs in the barn reorganized. The work was finished on Monday and really opens the space inside. There are several events coming to (b) (5) Privacy, (b) (7)(C) Farm. On April 20-21, there will be a 2-day bread-making class, but baking for the public will not begin until May 12. JC Parks & Recreation, with whom the JCHLC has a MOU, has planned 2 events: a wedding and a craft fair. The wedding will take place on April 28. They will be erecting tents on the site and using the barn as a dance area. May 5 is the Blue Ridge Arts and Crafts Fair, and the 60 vendor spots sold out. Koonce asked if the JCHLC has established a plan to monitor the site before and after the events. Burke replied that someone from the JCHLC as well as Parks and Rec will be checking the farm. The JCHLC is due to renew its MOU in May, and the next few weeks will inform both parties about the capacity of the farm for these kinds of events. The JCHLC has also added a loop trail which is maintained by Parks & Rec. The JCHLC is taking on a student intern in Shepherd's Geomatics program who will be in the GIS office working with a local landscape architect. She will plan a 10-year evolution of the JCHLC's 10 acres & the Board of Education adjoining 40 acres to create the (b) (5) Privacy, (b) (7)(C) Farm Native Species Park." The site will focus on WV native species. The JCHLC can expect a presentation on the proposed plan at the August meeting.

### E. Status of (b) (5) Privacy, (b) (7)(C) NR nomination – (b) (5) Privacy, (b) (7)(C)

(b) (5) Privacy, (b) (7)(C) said the nomination remains in review in Washington, but the JCHLC should hear something this month.

### F. Status of Rte. 340 – MOU with WVDOH – Horter

The JCHLC has until the end of May to come up with a plan for the National Register nominations, oral histories, and interpretive plans around Rippon. The WVDOH must approve the plan, and the JCHLC must prioritize the activities. After the money has been sent, the JCHLC has 5 years to complete the projects. Koonce asked if the MOU was voted on, and a review of last year's minutes' show that it was voted on in September 2017.

### G. Status of interpretative projects – Kelly